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Combating the Illicit Art Trade in the European Union: Europol's Role in Recovering Stolen Artwork

Jennifer Sultan*

I. INTRODUCTION

International art theft has increased throughout the 1990s, with the number of art and antiques thefts doubling in the past few decades.¹ Stolen art transactions constitute approximately five percent of the entire art market.² Yet, this seemingly small percentage translates to anywhere between \$2 billion to \$6 billion of art and antiques stolen every year.³ The high mar-

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¹ See Susan Clark, *Prized Possessions; Antiques*, TIMES (London), Oct. 15, 1995, at 1, available in 1995 WL 7704740; see also Jean Eaglesham, *Insure to Beat the High-Value Burglars: A Specialist Policy Can Protect Your Wealth*, FIN. TIMES, June 1, 1996, at 3, available in LEXIS, News Library, Fintme File ("[A]rt theft alone has more than doubled in the past five years . . ."); Valerie Hughes & Laurie Wright, *International Efforts to Secure the Return of Stolen or Illegally Exported Cultural Objects: Has Unidroit Found a Global Solution?*, CANADIAN YEARBOOK OF INT'L LAW 219, 222 (1994) (noting that the illicit trade in art and cultural objects is increasingly international in character and continues to expand at an alarming rate).

² See Charles A. Riley II, *Artcops*, ART & AUCTION, Mar. 1991, at 124-25.

³ See Ruth J. Katz, *Let the Buyer Beware; Art Collecting*, COLONIAL HOMES, Sept. 1997, at 28, available in LEXIS, News Library, Asapii File; see also Jo Durden-Smith, *Masterpieces as Money*, TOWN & COUNTRY MONTHLY, July 1, 1996, at 30, available in 1996 WL 9321433; *Art for Money's Sake: Experts Say Thefts Total as Much as \$6 billion Yearly*, ATLANTA J. & CONST., Nov. 26, 1995, at K9, available in 1995 WL 11694595. More conservative estimates place world art theft at approximately \$1 billion a year. See Paul Majendie, *Art Industry takes to Internet to Catch Thieves*, REUTERS WORLD SERVICE, Nov. 21, 1996, available in LEXIS, News Library, Reuwlid File; *The News in Brief*, CHRISTIAN SCI. MONITOR, Nov. 16, 1995, at 2, available in 1995 WL 6398072.

ket value of many artworks makes art theft one of the most profitable criminal enterprises, behind only drug trafficking and illegal arms dealing.⁴

Consistent with the international trend of increased art theft in recent years, there has been an increase in thefts across Europe.⁵ Some statistics demonstrate the magnitude of the problem in Europe. For example, from 1970 to 1990, Italy recorded 253,000 art thefts,⁶ and thieves steal approximately 30,000 artworks from Italy every year.⁷ Likewise in France, which is second only to Italy in the number of art thefts, approximately 6,000 cultural objects are stolen annually.⁸ In Spain, which experiences fewer thefts than Italy and France, thieves steal approximately 200 artworks per year.⁹ And in Britain, which is considered to be the world's art and antiques trade center, losses due to art theft are estimated to be as high as \$1 billion.¹⁰

Art thefts in recent years have not only grown more frequent but are also of a higher profile.¹¹ For example, in 1992 in Modena, Italy, armed

⁴See Steve Lopez & Charlotte Faltermayer, *The Great Art Caper; Is the Heist of the Century About to be Solved? Two Cons May Hold the Answer*, TIME, Nov. 17, 1997, at 74, available in LEXIS, News Library, Time File. Others rank art theft ahead of arms dealing and behind only drug trafficking and computerized fraud. See Barbara Hoffman, *How Unidroit Protects Cultural Property, Part I*, N.Y.L.J., Mar. 3, 1995, at 5, 5 n.1, available in LEXIS, News Library, Nylawj File. Some claim art theft is behind only drug trafficking. See Jojo Moyes, *A Global Hit: The Antiques Rogues Show*, INDEPENDENT, Nov. 30, 1996, at 1, available in LEXIS, News Library, Indpnt File. A less commonly cited ranking by Interpol places the illegal trade in art and antiquities as third only to drugs and white-collar crime. See Sue Reid, *Rich Pickings*, SUN. TIMES, Oct. 27, 1996, available in LEXIS, News Library, Times File.

⁵See Maria Kielmas, *Thieves are Mastering the World of Fine Art; Some Dealers and Galleries Turn to Insurance as Thefts Continue to Increase*, BUS. INS., Jan. 29, 1996, at G2, available in LEXIS, News Library, Busins File; see also Robert Read (fine art underwriter), quoted in Adrian Ladbury, *Art Theft Increase Blamed on Organized Crime*, BUS. INS., Jan. 16, 1995, at 47, available in LEXIS, News Library, Busins File.

⁶See Ralph Blumenthal, *Museums Getting Together to Track Stolen Art*, N.Y. TIMES, July 16, 1996, at C13, available in LEXIS, News Library, Nyt File.

⁷See Richard Owen, *Art Police Line Up Lost Treasures*, TIMES (London), May 25, 1996, available in LEXIS, News Library, Ttimes File.

⁸See Tara Patel, *Culture Vultures Have Authorities Scrambling to End Illicit Art Trade*, J. COM., July 31, 1995, at 1A, available in LEXIS, News Library, Joc File. According to French police, only a fraction of the goods are stolen from museums, while most are taken from churches and private homes. *Id.*

⁹See Sinikka Tarvainen, *Million-Dollar Illicit Art Trade Defies Policing*, DEUTSCHE PRESSE-AGENTUR, Dec. 13, 1997, available in LEXIS, News Library, Dpa File.

¹⁰See UK: *Eidetic Chips in on the Fight Against Art Theft*, POST MAG., Mar. 13, 1997, available in LEXIS, News Library, Txtnws file. This figure likely includes losses that are related to the thefts, in addition to the financial value of the artworks themselves. For a discussion of related losses, see *infra* text accompanying notes 51-61. A more conservative estimate places annual British losses due to art theft at \$4.9 million to \$8.1 million. See Matthew MacDermott, *U.K. Forming Force to Reduce Art Theft*, BUS. INS., Feb. 16, 1998, at 55, available in LEXIS, News Library, Busins File.

¹¹See Kielmas, *supra* note 5. Recent figures demonstrate how widespread the theft of famous artworks has become. The Art Loss Register has world-wide records indicating that

bandits overpowered guards and escaped with five of the most important pictures in the city's main gallery, including a Velazquez, an El Greco, and a Correggio.¹² Later that year in September, a Jean-Baptiste Oudry painting, worth \$12.6 million, was stolen from a stately home in Norfolk, England.¹³ In November 1993, seven Picasso paintings, including *La Source*, were among a group of works stolen from the Museum of Modern Art in Stockholm, Sweden.¹⁴ These Picasso paintings were uninsured,¹⁵ and the total value of the group of paintings was \$60 million.¹⁶

In February 1994, Edvard Munch's *The Scream* was stolen from the National Gallery in Oslo, Norway.¹⁷ The work, which was uninsured and later recovered, was valued at \$72 million.¹⁸ In July of that same year, two paintings by Joseph Mallord William Turner, *Shade and Darkness* and *Light and Color*, which were on loan to the Schirn Kunsthalle in Frankfurt, Germany, were stolen.¹⁹ The combined value of those paintings, insured by Lloyd's of London Syndicate 33, and managed by Hiscox Syndicates Ltd., is estimated to be \$30 million.²⁰ Also in July 1994, a painting by German painter Caspar David Friedrich called *Wafting Mist*, was stolen from the Schirn Kunsthalle,²¹ and *The Crucifixion*, by Dutch painter Pieter Lastman, was stolen from the Rembrandt House in Amsterdam.²² In October 1994, thieves stole Rembrandt's *Bearded Man* from a Dutch national museum,²³ and in November, thieves stole a Rembrandt portrait, valued at \$470,300, from a stately home in England.²⁴

349 Picasso artworks, 250 works by Chagall, 175 works by Dali, 121 works by Rembrandt, 112 works by Renoir, 269 works by Miro, 119 works by Andy Warhol, and 51 works by David Hockney are missing. See Tim Reid & Catherine Milner, *Stolen Old Masters Raise Cash for Crime; Bankers Urged to Search Strongrooms for Masterpieces*, SUNDAY TELEGRAPH, Dec. 7, 1997, available in LEXIS, News Library, Telegr File.

¹² See Alexander Stille, *Art Thieves Bleed Italy's Heritage*, N.Y. TIMES, Aug. 2, 1992, at 27, available in LEXIS, News Library, Nyt File.

¹³ See Sarah Jane Checkland, *To Catch a Thief*, ART & AUCTION, Apr. 1995, at 92, 93.

¹⁴ See Kielmas, *supra* note 5.

¹⁵ See Checkland, *supra* note 13, at 93. In fact, many pieces are not insured, thereby further exacerbating the magnitude of the loss for owners. For a discussion of the prohibitive cost of insuring art, see *infra* text accompanying notes 39-40.

¹⁶ See Maria Kielmas, *Stolen Rembrandt is Uninsured*, BUS. INS., Oct. 17, 1994, at 75, available in LEXIS, News Library, Busins File.

¹⁷ See Kielmas, *supra* note 5.

¹⁸ *Id.* Another estimate places the painting's value at \$55 million. See *Thieves Charged*, ART & AUCTION, May 1995, at 72.

¹⁹ See Kielmas, *supra* note 5.

²⁰ *Id.*

²¹ See Geraldine Norman, *What Interpol Wants for Christmas*, INDEPENDENT, Dec. 22, 1996, available in LEXIS, News Library, Indpnt File.

²² *Id.*

²³ See Kielmas, *Stolen Rembrandt is Uninsured*, *supra* note 16.

²⁴ See Patricia Reaney, *Art Thieves Hit Britain's Stately Homes*, REUTERS N. AM. WIRE, Jan. 27, 1995, available in LEXIS, News Library, Reuna File.

More recently, Titian's *Rest on the Flight to Egypt*, worth about \$7.5 million, was stolen from a private collection in Wiltshire, England in January 1995.²⁵ The painting, along with two other stolen paintings with a combined value of \$31,350, was insured by Nordstern Art Insurance Ltd. and Hiscox Syndicate.²⁶ Between July 1994 and January 1995, two paintings and a piece of sculpture were stolen from the Louvre Museum in Paris.²⁷ One of the paintings was a Turpin de Crisse's *Fallow Deer in a Landscape*.²⁸ In 1996, Caspar David Friedrich's painting, *View of a Harbor*, was stolen from a German palace.²⁹ Also in 1996, thieves stole Sir Edward Burne-Jones' *Two Girls with a Viol and Music* from a van outside a London auction house.³⁰

In February 1997, thieves stole Gustav Klimt's *Portrait of a Lady* from a gallery in northern Italy.³¹ In March 1997, a thief stole Picasso's \$1 million *Tete de Femme* from a London Gallery³², and in June, thieves stole five Picassos from another London gallery.³³ Finally, in September 1997, two paintings were stolen from Antwerp's Museum of Fine Arts: one was a Van Gogh, with an estimated value of \$810,000, and the other a painting by Adolphe Monticelli, valued at about \$81,000.³⁴

²⁵ See Kielmas, *supra* note 5; see also INTERNATIONAL FOUNDATION FOR ART RESEARCH REPORTS, Dec. 1995, at 2 [hereinafter IFAR REPORTS]. Apparently the thieves followed a plan by which they either unplugged the floodlights or covered them to ensure that the grounds would be dark. Two clues point to the possibility that those responsible for the theft may be part of a group of thieves: 1) the thieves used a ladder; and 2) this theft occurred shortly after the theft of the Rembrandt painting from another stately home in Wiltshire. See IFAR REPORTS, Feb./Mar. 1995, at 6.

²⁶ See Kielmas, *supra* note 5.

²⁷ See IFAR REPORTS, Feb./Mar. 1995, at 6.

²⁸ See Francine Cunningham, *The Art Take-Away*, SCOTSMAN, June 22, 1995, at 16, available in LEXIS, News Library, Arcnws File.

²⁹ See *Famous Painting Stolen from Potsdam Landmark*, THIS WEEK IN GERMANY, Dec. 13, 1996, available in LEXIS, News Library, Wkgerm File.

³⁰ See Dan Glaister, *Nine Held Over Art Thefts After Lock-up Recovery*, GUARDIAN (London), Jan. 28, 1997, at 5, available in LEXIS, News Library, Guardn File; Sarah Jane Checkland, *Police Sting Recovers Burne-Jones*, INDEPENDENT (London), Dec. 1, 1996, at 9, available in LEXIS, News Library, Indpnt File.

³¹ See Andrew Gumbel, *Gallery Thieves Go fishing to Haul in a Lady*, INDEPENDENT (London), Feb. 24, 1997, at 1, available in LEXIS, News Library, Indpnt File. The thieves supposedly removed the painting by lowering a hook down from the roof of the gallery through a skylight. *Id.*

³² See *British Police Arrest Duo Over Stolen Picasso*, REUTERS NO. AMER. WIRE, Mar. 14, 1997, available in LEXIS, News Library, Reuwlid File. The police tracked down the thieves two weeks after the theft. *Id.*; see also *Briton Quizzed over Picasso Theft*, AGENCE FRANCE PRESSE, Aug. 14, 1997, available in LEXIS, News Library, Afp File.

³³ See Reid & Milner, *supra* note 11.

³⁴ See *Burglars Make Off with a Van Gogh*, NEWS & OBSERVER, Sept. 5, 1997, available in LEXIS, News Library, Nwsobr File.

As the number of art thefts increases in Europe and elsewhere, the number of insurance claims also rises.³⁵ Accordingly, insurance companies share the heavy financial burden that accompanies art theft.³⁶ Worldwide, insurers pay between \$3 billion to \$5 billion a year to policyholders with stolen art claims.³⁷ In 1994, insurance companies paid close to \$1 billion for artworks stolen in Britain alone.³⁸ In addition, as the value of art increases, so does the cost of insuring collections.³⁹ The prohibitive cost of insurance is one reason that most museums are underinsured or not insured at all.⁴⁰ Moreover, many owners who do have insurance find that they do

³⁵ See Kielmas, *supra* note 5.

³⁶ This is why insurance companies are eager for museums and collectors to improve their security and make use of new technologies for marking art objects for identification. See Alan Riding, *Finding New Ways to Foil the World's Art Thieves*, INT'L HERALD TRIB., Nov. 21, 1995, available in LEXIS, News Library, Iht File. See also Caroline Merrell, *Fine Art Connoisseurs Pay 1 Billion Pound Visit to English Country Houses*, TIMES (London), Aug. 3, 1996, available in LEXIS, News Library, Ttimes File (reporting that many insurers require the owner to buy an alarm system and to maintain comprehensive photographic records); Caroline Wakeford (general manager of the Art Loss Register), *quoted in* Ladbury, *supra* note 5 (predicting that insurers will seek to obtain more detailed information about the works they insure).

Although art insurance is a global business, until recently the two main players were Lloyd's of London and the German company Nordstern (now taken over by French insurer Union des Assurances de Paris). See *Shopping List Theft—Art Insurance*, REUTER TEXTLINE REV., June 30, 1994, available in LEXIS, News Library, Txprim File. However, general shrinking of capacity at Lloyd's has recently affected rates. See Gavin Souter & Roberto Ceniceros, *The Art of Finding a Niche that is Profitable for Agents; Low-Frequency, High-Severity Losses Await Agents, Insurers Entering Fine Arts*, BUS. INS., Nov. 7, 1994, at 22A, available in LEXIS, News Library, Busins File. Moreover, as rates have softened, other insurance companies have begun doing business in this area. See *UK: Special Report — Stolen Treasures*, POST MAG., June 5, 1997, available in LEXIS, News Library, Txtlne File.

³⁷ See Russ Banham, *Insurers and the Art Community Design New Plan to Cut Losses*, J. COM., May 30, 1997, at 10A, available in LEXIS, News Library, Joc File.

³⁸ See Riding, *supra* note 36.

³⁹ See Stacy Adler, *Stolen Art Not Insured; Lack of Coverage Not Unusual: Brokers*, BUS. INS., Mar. 26, 1990, available in LEXIS, News Library, Busins File; see also David Scully (London market manager for Nordstern Art Insurance Ltd.), *quoted in* Ladbury, *supra* note 5 (predicting that the cost of fine art insurance will increase as a result of the recent spate of thefts, and that insurers will take a closer look at the way they value the object covered); Harold Smith (New York insurance adjuster who specializes in fine art), *quoted in* Andrew L. Yarrow, *A Lucrative Crime Grows into a Costly Epidemic*, N.Y. TIMES, Mar. 20, 1990, at C20, available in LEXIS, News Library, Nyt File ("With the increase in art values, insurance premiums have gone up because there's much more at risk."). However, while household insurers usually have loaded premiums, specialist insurers claim to be able to offer insurance premiums at a rate that is up to 10% lower. See Merrell, *supra* note 36.

⁴⁰ See ART LOSS REGISTER ANNUAL REVIEW 21 (1995). See generally Yarrow, *supra* note 39, at C20 ("Whereas private and corporate collectors generally insure each work they own for a fixed value, museums and dealers usually do not itemize their collections or insure specific works, and few museums or galleries insure their collections for their full value.").

Another reason that museums are underinsured is that it is unlikely that a museum will lose an entire collection in a single event. See Adler, *supra* note 39; see also Axel Beyer

not have enough coverage when they seek to recover through an insurance claim.⁴¹ Thus, while insurance companies face greater costs associated with an increasing number of claims, owners must weigh the costs of expensive insurance premiums against the value of the loss of their artwork and the probability of loss.

Sadly, only ten to fifteen percent of stolen art is ever recovered.⁴² On one hand, the more important the work stolen, the more likely it is to be recovered because famous artworks are more difficult to dispose of, and authorities work much harder to recover well-known pieces.⁴³ Greater Police involvement is probably why the recovery rate for well-known and valuable works of art may be as high as fifty percent.⁴⁴ However, law enforcement agencies in most countries give art theft cases low priority,⁴⁵ which is in part due to the fact that few agencies have the resources to assign full-time agents to art theft cases.⁴⁶

(executive vice president of Nordstern Insurance Company of America), *quoted in id.* (museums try to calculate their maximum possible loss in a worst-case scenario, which leads them to insure their collections for only about 15 to 25% of the total value). A third reason that museums do not attempt to insure the full value of their collections is the difficulty of determining a work's replacement cost. *See* Margo D. Beller, *Need for Loss Control Fails to Recede with Art Values*, J. COM., Apr. 27, 1993, at 1A, available in LEXIS, News Library, Joc File.

In general, high deductibles for museums means that they are less likely to report thefts than homeowners. *See* Sarah S. Conley, INTERNATIONAL ART THEFT, 13 WISC. INT'L L.J. 493, 501 (1995) ("Homeowners, on average, have a lower insurance deductible and therefore are more likely to report a theft. In contrast, dealers or museums generally have a higher deductible and are more likely to absorb the loss.").

⁴¹ *See* Merrell, *supra* note 36 ("A recent survey from Hiscox, a specialist in fine art insurance, found that about 53 percent of owners of high value homes in the U.K. admit to having art, antiques, and valuables which have either been valued for insurance purposes more than three years ago, or in the case of a third of them have not been valued at all.").

⁴² *See* Katz, *supra* note 3; *see also* John Rockwell, *Rome Has a Show of Stolen Artworks to Highlight a Fight*, N.Y. TIMES, May 25, 1994, at C13, available in LEXIS, News Library, Nyt File. While this statistic is regularly cited, a more conservative estimate places the recovery rate as low as 3.5%. *See* Sally Weale, *How to Steal a Masterpiece*, GUARDIAN, Jan. 18, 1996, at T2, available in LEXIS, News Library, Guardn File.

One demonstration of the low recovery rate as it applies to an individual country is that in 1993, 29,000 artworks were stolen in Italy and only 5,500 were found. *See* Rockwell, *supra*.

⁴³ *See* Anthony Thorncroft, *The Fine Art of Stealing an Old Painting: Picture Thieves Get it Wrong When They Start Thinking Big*, FINANCIAL TIMES, Feb. 4, 1995, available in 1995 WL 4330041. *But cf.* Peter Watson, *High Art and Low Cunning*, OBSERVER, May 4, 1997, at 17, available in LEXIS, News Library, Obsrvr File (discussing a recent Art Loss Register survey that shows that thieves may be successfully stealing artworks by famous artists more easily than was once thought).

⁴⁴ *See* JOHN E. CONKLIN, ART CRIME 6 (1994).

⁴⁵ *See* Riley, *supra* note 2, at 124.

⁴⁶ *See id.*; *see also* MacDermott, *supra* note 10, at 55 (explaining that budget cuts impair police ability to fight art theft). For example, only 10 out of the 51 regional British police forces have specialized art and antiques officers, and communication between these forces is

Generally, the illicit art trade is divided into two categories: theft and illegal export.⁴⁷ This comment will focus on "art theft" in the European Union ("EU").⁴⁸ For the purpose of this comment, "art theft" or "stolen art" refers to art stolen from collectors (including churches as well as individuals), museums (private and state-funded), galleries, and auction houses.⁴⁹ In terms of value, this type of art theft is estimated to constitute more than ten percent of all art stolen, while theft of antiquities, pillaging and looting account for the majority of thefts.⁵⁰ Thus this comment focuses on artwork that is stolen from places where it is displayed or housed, regardless of whether the purpose of the display or housing is for private or public viewing, storage, preservation, or part of a concerted effort to attract a buyer. Although theft of art from collectors, museums, galleries, and auction houses accounts for a relatively small portion of the illicit art trade, its financial impact on society extends well beyond market value of the artwork.

There are a number of reasons for the fact that the monetary loss of an artwork far exceeds its own market or artistic value.⁵¹ First, victims of art theft sometimes do not report their losses to law enforcement authorities.⁵² One explanation for low reporting rates is that owners of expensive collections do not want to draw the attention of thieves to their collections.⁵³ Another explanation for the lack of reporting is that some owners do not want to alert authorities about their failure to pay taxes on the property involved in the theft.⁵⁴

poor because British police forces are designed to operate as autonomous units. See Checkland, *supra* note 13, at 93.

⁴⁷ Illegal export generally refers to art that is exported from a country in contravention to that country's exporting laws. Art theft refers to art that is removed from its rightful owner without permission. In England, for example, courts have determined that art, illegally exported from another country, is not necessarily stolen. See William G. Pearlstein, *Claims for the Repatriation of Cultural Property; Prospects for a Managed Antiquities Market*, 28 LAW & POL. INT'L BUS. 123 (1996), available in LEXIS, News Library, Lpib File.

⁴⁸ There are 15 Member States in the EU: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech republic, Slovenia, Turkey, Cyprus, Malta, and Switzerland all formally have applied to join the EU. See WENER WEIDENFELD & WOLFGANG WESSELS, *EUROPE FROM A TO Z* 95 (1997).

⁴⁹ The term "cultural object" could be an appropriate substitute for the word "art" as used in this comment. However, legal instruments that are discussed in later sections of this comment define "cultural object" differently. Thus, I have chosen to define the category of art with which this comment is concerned. For descriptions of the various definitions of "cultural object" or "cultural property," see *infra* sections III, IV, and V.

⁵⁰ See CONKLIN, *supra* note 44, at 119.

⁵¹ See Steven F. Grover, Comment, *The Need for Civil-Law Nations to Adopt Discovery Rules in Art Replevin Actions: A Comparative Study*, 70 TEX. L. REV. 1431, 1440 (1992).

⁵² *Id.* at 1435.

⁵³ See CONKLIN, *supra* note 44, at 4.

⁵⁴ *Id.*

A second reason that the amount of loss exceeds the value of stolen art is that after the theft of valuable works of art, insurance companies frequently offer rewards for the return of the stolen artwork.⁵⁵ For example, Nordstern Art Insurance has offered up to \$157,600 for information leading to the return of the Titian painting *Rest on the Flight to Egypt* stolen in January 1995 from a British stately home.⁵⁶ Similarly, owners may offer rewards in an effort to retrieve the stolen work themselves.⁵⁷ The value of loss is further increased when insurance companies agree to pay out ransoms demanded by thieves.⁵⁸ Alternatively, thieves may demand and receive ransom payments from the owners themselves.⁵⁹ Furthermore, some thefts involve violence, which adds related costs such as "deaths, hospital expenses, lost wages, and permanent disabilities."⁶⁰

Finally, another aspect of the immeasurable value of loss is that some people involved in art trade may place a high cultural value on art that is distinct from the market value and more difficult to quantify when measuring the value of the loss.⁶¹

⁵⁵ *Id.* at 144-45.

⁵⁶ See Reaney, *supra* note 24.

⁵⁷ See CONKLIN, *supra* note 44, at 145-46.

⁵⁸ *Id.* at 145. But cf. Yarrow, *supra* note 39 ("Insurance companies officially deny that they ever pay ransom, but law-enforcement officials and some insurers say that it is sometimes paid.")

⁵⁹ See CONKLIN, *supra* note 44, at 9. For example, the thieves who stole Titian's *Rest on the Flight to Egypt* later demanded a ransom from the owner, Lord Bath. See Catherine Milner, *Art Thieves Hold Old Master to Ransom: Raiders Contact Lord Bath on Titian, Too Hot to Handle*, SUN. TELEGRAPH, Dec. 1, 1996, at 5, available in LEXIS, News Library, Telegr File.

⁶⁰ *Id.* at 4. In fact, recent reports indicate that the number of aggravated thefts involving art works is increasing. See UK: *Special Report--Stolen Treasures*, *supra* note 36.

⁶¹ For a discussion of the need to devise a uniform set of rules that governs theft of cultural property and recognizes the difference between cultural goods and commercial goods, see Spencer A. Kinderman, Comment, *The Unidroit Draft Convention on Cultural Objects: An Examination of the Need for a Uniform Legal Framework for Controlling the Illicit Movement of Cultural Property*, 7 EMORY INT'L L. REV. 457, 461 (1993). See also Roger W. Mastalir, *A Proposal for Protecting the "Cultural" and "Property" Aspects of Cultural Property Under International Law*, 16 FORDHAM INT'L L.J. 1033 (1993) (arguing that efforts to protect and preserve cultural property must address both the property aspect that focuses on materialistic value and ownership, as well as the cultural aspect that focuses on human rights and self-determination). For a discussion of cultural value as distinct from free market value in the trade of audiovisual goods and services, see Tina W. Chao, Comment, *GATT's Cultural Exemption of Audiovisual Trade: The United States May Have Lost the Battle but Not the War*, 17 U. PA. J. INT'L ECON. L. 1127 (1996).

The cultural value placed on works of art is usually discussed in the context of state-owned art. See Elizabeth Lee Roberts, *Cultural Property in the European Community: A Case Against Extensive National Retention*, 28 TEX. INT'L L.J. 191 (1993) (discussing the concept of national cultural patrimony and arguing for universal cultural patrimony on the basis that free trade in art is in the interest of mankind's common cultural heritage). See also Stephanie O. Forbes, *Securing the Future of our Past: Current Efforts to Protect Cultural Property*, 9 TRANSNAT'L L. 235, 241-43 (1996). However, I assume that the theft of artwork

In order to provide a context for a discussion of how to effectively combat the art theft problem, Part II of this comment will examine the various incentives that encourage art theft. Parts III, IV, and V will explain the background and key provisions of two international conventions and one regional directive that address the problem of art theft in the EU. Part VI will analyze the strengths and shortcomings of the existing legal regime according to the two conventions and a directive. Part VII will discuss three mechanisms that have been somewhat successful in the recovery of stolen artwork and will examine the inadequacies of these mechanisms. Part VIII will propose and evaluate the potential role for Europol in combating art theft. This last section will explain that Europol offers a promising complement to existing mechanisms because it provides a cooperative law-enforcement approach that focuses on centralized communication and data transmission, the sharing of resources and expertise, and the coordination of investigations.

II. INCENTIVES FOR THEFT

Many incentives exist for art thieves.⁶² One obvious incentive is the high value of art, and increasing art prices create an even greater incentive.⁶³ Although black market sale prices might be lower than regular market prices of artwork, the profits are still an incentive for thieves seeking to sell the stolen art,⁶⁴ since thieves pay nothing for the piece to begin with. In addition, the value of artworks has risen at a faster rate than inflation, making art a good investment.⁶⁵

from a private owner has a similar cultural value when it comes to measuring the loss. To be sure, while public viewers suffer no material loss when an art piece is stolen from a private museum, they do suffer a cultural loss that the museum likely shares with them.

⁶² See Hughes & Wright, *supra* note 1, at 222 (explaining that efforts to curb the illicit trade in art and cultural objects "have been thwarted by various factors, including the extraordinary increase since the Second World War in the value of works of art and the consequent expansion in the number of rich and eager clients and markets, the increasingly sophisticated methods of international communication and electronic transfer of information, and the ease in crossing international borders. Another concern is that the trade in works of art is often linked to the international traffic in drugs and international money laundering activities.") (citations omitted).

⁶³ See CONKLIN, *supra* note 44, at 4. But cf. Michael J. Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possessio animo Ferundi/Lucrandi*, 14 DICK. J. INT'L L. 31, 50 (1995) ("While financial considerations are important motivating factors in the acquisitions of art, the most common demand which sustains the black market has always been the voracious desire of collectors to possess as many rare items of beauty as possible.")

⁶⁴ See Tarvainen, *supra* note 9; see also Kimberly A. Short, Comment, *Preventing the Theft and Illegal Export of Art in a Europe Without Borders*, VAND. J. TRANSNAT'L L. 633, 638 (1993).

⁶⁵ See Kate Dourian, *Traffic in Stolen Artwork Faces Attack; Insurance: Police in Europe Fear that Theft Will Increase When Border Controls are Dropped Next Year*, L.A. TIMES, Nov. 24, 1991, at A30, available in LEXIS, News Library, Lat File.

Additionally, the incidence of art theft is linked to the increase in illegal drug use.⁶⁶ Drug users may purchase drugs with the money they make from selling stolen artwork or they may directly use the stolen art as collateral in a drug deal.⁶⁷ Law enforcement officials recovered stolen paintings in drug raids in Amsterdam in 1989 and in Scotland in 1990.⁶⁸ In addition, Colombian drug-lord Pablo Escobar was known to have his own collection of stolen artwork, including several stolen Impressionist paintings.⁶⁹

Another incentive for art theft is that art can be used for laundering money.⁷⁰ Laws that protect the bona fide purchaser ("BFP") of stolen art make it easy for a thief to steal art anywhere and then resell the artwork in a country that ensures "good title" for the BFP.⁷¹ Officials also suspect that drug cartels rely on money laundering schemes in which they buy and sell paintings in London and New York galleries.⁷² For instance, one major operation, entitled "Operation Dinero," was organized by the United States Drug Enforcement Agency ("DEA") and authorities from several European countries in order to catch drug money launderers.⁷³ During this operation, the authorities found three paintings, purportedly by Rubens, Reynolds, and Picasso, which had been stolen and then sold in order to launder the drug money.⁷⁴ Also, in 1993, authorities recovered eighteen paintings used by

⁶⁶ See Kielmas, *supra* note 5.

Former Detective Chief Inspector Charles Hill, while still head of Scotland Yard's Art and Antiques Squad, pointed to a drug connection in all of the significant high-profile cases that the squad investigated in recent years, including: the theft of works by Rubens and Vermeer from the stately home of an Irish arts patron; the theft of Edvard Munch's *Scream* from the National Gallery in Oslo, Norway; the theft of Titian's *Rest on the Flight to Egypt* from Longleat, Wilshire; and Jean Baptiste Oudry's *White Duck*, stolen in 1993 from the Marquess of Cholmondeley in Norfolk. See Dalya Alberge, *Art Detectives Join the Flying Squad*, N.Y. TIMES, Oct. 23, 1995, available in LEXIS, News Library, Ttimes File.

⁶⁷ See Kielmas, *supra* note 5; see also CONKLIN, *supra* note 44, at 184-85.

⁶⁸ See Kielmas, *supra* note 5.

⁶⁹ See Richard Donkin, *Insurance Warning Over Art Thefts*, FIN. TIMES, Jan. 9, 1995, at 5, available in 1995 WL 9119961.

⁷⁰ See CONKLIN, *supra* note 44, at 181-82; see also Moyes, *supra* note 4.

⁷¹ See Grover, *supra* note 51, at 1432. A "bona fide purchaser" is "one who has purchased property for value without any notice of any defects in the title of the seller." BLACK'S LAW DICTIONARY 177 (6th ed. 1990). "Good title" is "[a] title free from litigation, palpable defects and grave doubts." *Id.* at 694. Laws that ensure "good title" to a BFP operate on the premise that the purchaser has good title to the property—even if it was previously stolen by the seller or another intermediary—so long as the purchaser did not know that the property was stolen when the purchase was made. For a discussion on bona fide purchasers, see *infra* text accompanying notes 94-100.

⁷² See Clifford Krauss & Douglas Frantz, *Calif Drug Cartel Using U.S. Business to Launder Cash*, N.Y. TIMES, Oct. 30, 1995, at A1, available in LEXIS, News Library, Nyt File.

⁷³ See Durden-Smith, *supra* note 3, at 30.

⁷⁴ *Id.*

thieves as collateral to secure a stake in a bank, through which the thieves intended to launder drug profits.⁷⁵

Other incentives for stealing art are particularly relevant for thefts that occur in Europe. Those involved in organized crime are attracted to the rising prices of artwork.⁷⁶ Thus, it is not surprising that art collectors, police, and insurers believe that organized crime constitutes a main cause of the increasing theft rate of European fine art.⁷⁷ Authorities believe that an important painting, Caravaggio's *Nativity with Saints Francis and Lawrence*, stolen in October 1969 from the Church of San Lorenzo in Palermo, Sicily, is in the private collection of a senior Mafia chieftain⁷⁸ or is being used as collateral in Mafia deals.⁷⁹ Likewise, in the early 1990s, when Italian police raided the private bunker of a boss of the organized crime ring, the Camorra, they found the entire residence decorated with stolen art objects.⁸⁰

Some criminals attempt to use stolen artwork in negotiations with police. When notorious Irish crime boss and police informant John Traynor was sentenced for fraud in Britain in 1989, he struck a deal with police who wanted information on the theft of the Beit art collection, masterminded by Traynor's associate in 1986.⁸¹ Recently, an Italian mob boss admitted to stealing a reliquary of *Saint Anthony* from an Italian cathedral, Alvisi Vivarini's *Madonna and Child* from a Venetian palace, as well as several other works from a gallery in Italy.⁸² He explained that the art works were to serve as "bargaining chips" in order to secure the release of any gang members that might be arrested in the future.⁸³ Similarly, the motive in a

⁷⁵ See Glaister, *supra* note 30. The paintings had been stolen from a private estate in Dublin in 1986 and included a Vermeer, a Gainsborough, a Rubens and a Goya. *Id.*

⁷⁶ See Thorncroft, *supra* note 43.

⁷⁷ See Ladbury, *supra* note 5, at 47; see also Vinay Kumar, *Action Plan to Tackle Vehicle Thefts*, HINDU, Sept. 20, 1997, available in LEXIS, News Library, Hindu File (claiming that the recent wave of art theft in Europe has become large enough to draw the attention of international criminal organizations).

⁷⁸ See Durden-Smith, *supra* note 3, at 30. In fact, in late 1996, a Mafia member testifying in an unrelated trial in Italy claimed that he was one of the people responsible for the painting's theft, which was commissioned. See Anne Hanley, *Stolen in 1969, Caravaggio's Adoration is one of the World's Greatest Missing Masterpieces. So Where is It?*, SUN. TELEGRAPH, Nov. 10, 1996, at 7, available in LEXIS, News Library, Telegr File; see also Richard Owen, *Mafia Stole Caravaggio Masterpiece for Andreotti, Palermo Court Told*, TIMES (London), Nov. 9, 1996, available in LEXIS, News Library, Times File.

⁷⁹ See Owen, *supra* note 78.

⁸⁰ See Stille, *supra* note 12.

⁸¹ See Rory Godson & Maeve Sheehan, *Charmed Life of the Informer*, SUN. TIMES, July 7, 1996, available in LEXIS, News Library, Times File.

⁸² See Durden-Smith, *supra* note 3, at 30.

⁸³ *Id.*

number of other Italian art thefts may have been to create a kind of insurance policy to deal with the police.⁸⁴

The absence of effective security measures to protect works provides another incentive for theft, particularly from churches.⁸⁵ A high proportion of European art thefts occur in Roman Catholic churches because they house many important art works without sufficient security to prevent theft.⁸⁶ In 1990 alone, 3,269 objects were taken from 562 churches in Italy.⁸⁷ According to French police, the number of thefts from churches has risen by fifty percent annually in recent years.⁸⁸ Unfortunately, churches are also unlikely to increase security, as tight security is anathema to their open-door policy.⁸⁹ Moreover, many European churches lack the funding to effectively safeguard their artworks from theft.⁹⁰

Europe is also uniquely susceptible to the increase in art thefts because, with fewer border controls among the western European countries today, stolen art is easier to transport from one country to the next.⁹¹ Thieves may have particular incentives to transfer stolen art from one European country to another for two main reasons. First, by smuggling stolen art to a country where the legal power to prosecute thieves expires quickly, the thief only has to hide the stolen property for a relatively short time until the statute of limitations expires.⁹² For instance, French laws protect thieves from arrest after five years have lapsed since the theft; in Great Britain, thieves gain protection after seven years; and in Italy and Germany the statute of limitations is ten years.⁹³

⁸⁴ *Id.*

⁸⁵ See CONKLIN, *supra* note 44, at 119.

⁸⁶ *Id.* at 121; see also *Quakes Latest Blow to Survival of Italy's Art; the Country's Vast Cultural Riches are Said to be in a State of Emergency*, DES MOINES REGISTER, Sept. 28, 1997, at 11, available in LEXIS, News Library, Dmoirg File; THE DESKBOOK OF ART LAW B-10 (Leonard D. DuBoff & Sally Holt Caplan eds., 2d ed. 1996) ("Thieves frequently choose unguarded churches as their targets.").

⁸⁷ See Stille, *supra* note 12, at 27. In March 1991, looters removed all the paintings, sculptures, and wall decorations over a period of days from Santa Maria delle Grazie at Caponapoli, an important Italian Renaissance church. *Id.* In another incident, vandals removed the main altar and altarpieces of six side chapels from the church of Santa Maria del Carmine in Aversa, Italy. *Id.*

Presumably, the number of art thefts from churches is even greater than cited as some thefts go unnoticed. See *1,273 Stolen Artworks Recovered in Italy*, CHI. TRIB., Mar. 31, 1997, at 7.

⁸⁸ See Patel, *supra* note 8.

⁸⁹ See Dalya Alberge, *Art Theft Enters Big League of Crime as Prices Increase: Fears that Britain's Heritage is Being Pillaged Have Prompted International Action*, INDEPENDENT, Nov. 12, 1990, at 7, available in LEXIS, News Library, Indpnt File.

⁹⁰ See CONKLIN, *supra* note 44, at 127.

⁹¹ See Kielmas, *supra* note 5.

⁹² See CONKLIN, *supra* note 44, at 271.

⁹³ *Id.*

A second incentive to transfer stolen art between European countries relates to the difference between the way common law and civil law countries treat BFPs of stolen art.⁹⁴ In common law nations, such as Britain and Ireland, a buyer cannot usually acquire good title from a thief, but in civil law nations such as France, BFPs are favored over original owners.⁹⁵ Thus, France allows a BFP to acquire good title to a stolen artwork three years from the date of purchase as long as the BFP purchased the artwork "from an established dealer or in an open marketplace."⁹⁶ Dutch law also imposes a three-year time limit after which title passes to the holder as long as the current holder acquired the item in good faith.⁹⁷ Belgium follows the French model as well.⁹⁸ In Italy, a BFP acquires good title immediately.⁹⁹ Germany has a limitation period of ten years, provided that the BFP purchased and possessed the work in good faith.¹⁰⁰ These incentives, which continue to exist, indicate that current mechanisms that aim to combat art theft are insufficient.¹⁰¹

Two international conventions and one EU directive have emerged out of the efforts of many countries to combat the illicit art trade. While the

⁹⁴ *Id.* at 271; see also Hughes & Wright, *supra* note 1, at 223 (noting that the different standards that different jurisdictions apply to the conflict between a BFP and a dispossessed owner contribute to the lack of success in dealing with the illegal traffic in cultural objects). For a definition of "BFP," see *supra* note 71.

⁹⁵ See IFAR REPORTS, Aug./Sept. 1991, at 5-6; see also Lyndel V. Prott, *UNESCO and Unidroit: A Partnership Against Trafficking in Cultural Objects*, 1 UNIFORM LAW REV. 59, 60 (1996). A recent law passed in England abolished the Market Over Rule, otherwise known as the "Thieves Charter," which had been incorporated in the Sales of Goods Act. An amendment to the Act, which took effect on January 3, 1995, abolished the law that enabled buyers of property to obtain good title to stolen works of art by proving that they acquired those works in good faith between sunrise and sunset at an open-air market that had been established since time immemorial. See Mark Dalrymple, *UK: Relief as Stolen Art Rule Abolished*, REUTERS TEXTLINE/LLOYD'S LIST, Feb. 24, 1995, available in LEXIS, World Library, Txtlne File. For a definition of "good title," see *supra* note 71.

⁹⁶ See CONKLIN, *supra* note 44, at 271; see also Prott, *supra* note 95.

⁹⁷ See Sabine Gimbrere & Tineke Pronk, *The Protection of Cultural Property: From UNESCO to the European Community with Special Reference to the Case of the Netherlands*, NETH. YEARBOOK OF INT'L L. 223, 248 (1992).

⁹⁸ See LYNDELL V. PROTT & P.J. O'KEEFE, 3 LAW AND THE CULTURAL HERITAGE 406 (1989).

⁹⁹ See CONKLIN, *supra* note 44, at 182; see also Prott, *supra* note 95.

¹⁰⁰ Victoria J. Vitrano, Comment, *Protecting Cultural Objects in an Internal Border-Free EC: The EC Directive and Regulation for the Protection and Return of Cultural Objects*, 17 FORDHAM INT'L L.J. 1164, 1173 (1994).

¹⁰¹ See Julia A. McCord, Comment, *The Strategic Targeting of Diligence: A New Perspective on Stemming the Illicit Trade in Art*, 70 IND. L.J. 985, 997 (1995) ("The staggering statistics reflecting the increasing magnitude of art theft in the world indicate that the present strategies to stem the illicit art trade are less than satisfactory."); see also Kinderman, *supra* note 61, at 459 (attributing the increase in the frequency of illicit art trade to a "flawed international legal framework for controlling the movement of cultural property.").

aim of these three legal schemes is admirable, they alone do not adequately address the problem of art theft in the EU.

III. THE UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1970)

The United Nations' Educational, Scientific and Cultural Organization ("UNESCO"), which came into being in 1946, is a specialized United Nations agency that operates on the philosophy that, in order to facilitate world peace and improve human welfare, countries must cooperate on educational, scientific and cultural matters.¹⁰² In the area of culture, UNESCO activities aim to protect cultural heritage and promote cultural development and identity.¹⁰³ One way in which UNESCO furthers its goals is by sponsoring international conventions.

In 1970, member countries of UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property ("UNESCO Convention") in an attempt to curb the trade of illicitly acquired cultural property.¹⁰⁴ The UNESCO Convention is based primarily on public international law and administrative law,¹⁰⁵ as well as international cooperation.¹⁰⁶ A major premise of the UNESCO Convention is that a state has a right to protect its cultural heritage even if it does not have title to the objects that constitute part of that heritage.¹⁰⁷

¹⁰² See 2 UNITED NATIONS LEGAL ORDER 602 (Oscar Schachler & Christopher C. Joyner eds., 1995).

¹⁰³ See UNITED NATIONS DEP'T OF PUBLIC INFORMATION, BASIC FACTS ABOUT THE UNITED NATIONS 231 (1992).

¹⁰⁴ UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, reprinted in 10 I.L.M. 289 (1970) [hereinafter UNESCO Convention]; see also IFAR REPORTS, *supra* note 95, at 6.

The preamble to the UNESCO Convention states:

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export.... Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation. . . .

UNESCO Convention, pmbl.

¹⁰⁵ See Hoffman, *supra* note 4, at 5.

¹⁰⁶ See UNESCO Convention, *supra* note 104, pmbl.

¹⁰⁷ See John B. Gordon, *The UNESCO Convention on the Illicit Movement of Art Treasures*, 12 HARV. INT'L L.J. 537, 540 (1971). Some commentators claim that the UNESCO Convention is mainly aimed at helping developing countries safeguard their archaeological sites. See, e.g., Comments of William H. Luers, President of the Metropolitan Museum of Art, New York, *America and the World*, (National Public Radio broadcast, June 3, 1995), available in LEXIS, News Library, Npr File.

The UNESCO Convention seeks to protect “cultural property,” a broadly defined category of items.¹⁰⁸ The UNESCO Convention does not clearly distinguish between stolen and illegally exported cultural property, despite the Convention’s stated aim to prevent the “import, export, or transfer of ownership of cultural property.”¹⁰⁹ Moreover, only items designated by a state as “cultural property,” within the UNESCO Convention’s definition in Article 1, are protected.¹¹⁰

The UNESCO Convention attempts to restrict the trade of illicitly removed “cultural property” through export licenses and a system of administrative control that allows Member States to prevent the illegal export and

¹⁰⁸ See UNESCO Convention, *supra* note 104, art. 1.

Article 1 states:

For the purposes of this Convention, the term “cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

¹⁰⁹ See UNESCO Convention, *supra* note 104, art. 3.

Article 3 states: “The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States parties thereto, shall be illicit.”

¹¹⁰ See UNESCO Convention, *supra* note 104, art. 1. For the full text of Article 1, see *supra* note 108.

import of "cultural property" and to request the return of such property.¹¹¹ In addition, the UNESCO Convention suggests that parties cooperate to protect the cultural property of any state party that faces a serious threat to its "cultural patrimony" due to pillaging.¹¹²

¹¹¹ See UNESCO Convention, *supra* note 104, arts. 6, 7 and 10(a).

Article 6 states:

The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7 states:

The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- (b)(i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
- (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 10(a) states:

The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject.

¹¹² See UNESCO Convention, *supra* note 104, art. 9.

Article 9 states:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and in-

It is clear that the UNESCO Convention only provides for recovery claims initiated by Member States, rather than private parties.¹¹³ Although the UNESCO Convention mentions that Member States should permit "rightful owners" to initiate actions for "the recovery of lost or stolen items of cultural property,"¹¹⁴ there are no provisions that describe how an individual might proceed with such a claim. Thus, the vast majority of commentators have stated unequivocally that the UNESCO Convention does not provide for a private right of action.¹¹⁵

The UNESCO Convention requires the return of cultural property that is illegally removed from a Member State's territory so long as it is sufficiently documented.¹¹⁶ Although this documentation requirement is not clearly defined in the Convention, one form of documentation that might satisfy this standard would be proof of an item's listing in a Member State's "national inventory of protected property," as provided for in Article 5.¹¹⁷ In the case of cultural property removed from churches and museums, the requesting state must also show proof of an item's listing in that institution's inventory list.¹¹⁸

ternational commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irreparable injury to the cultural heritage of the requesting State.

¹¹³ See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the text of Article 7(b)(ii), see *supra* note 111.

¹¹⁴ See UNESCO Convention, *supra* note 104, art. 13(c).

Article 13(c) states:

The States Parties to this Convention also undertake, consistent with the laws of each State:

* * *

(c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;

¹¹⁵ See e.g. Prott, *supra* note 95, at 62 and Gordon, *supra* note 107, at 550.

¹¹⁶ See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the text of Article 7(b)(ii), see *supra* note 111.

¹¹⁷ See UNESCO Convention, *supra* note 104, art. 5(b).

Article 5(b) states:

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

* * *

(b) establishing and keeping up to date, on basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage.

¹¹⁸ See UNESCO Convention, *supra* note 104, art. 7(b)(i). For the text of Article 7(b)(i), see *supra* note 111.

All requests for "recovery and return" of cultural property are diplomatic requests, rather than legal claims filed in a court,¹¹⁹ and there are no time limitations for when such requests may be made.¹²⁰ Furthermore, the requesting state bears the burden of compensating the "innocent purchaser" or the "person who has valid title" to the property in question.¹²¹ No provision in the UNESCO Convention requires the "innocent purchaser" or the person with valid title to provide proof of their innocence or valid title. Although State Parties may request UNESCO's assistance in helping them reach a settlement over a contested piece of property,¹²² the Convention has no specific provisions for how parties will engage in settlement discussions under UNESCO's auspices.

The UNESCO Convention's Article 7(b)(ii) requirement that a state return illegally removed cultural property upon request by another Member State, and that the requesting state automatically compensate the BFP, make the UNESCO Convention difficult to implement according to many commentators.¹²³ Specifically, the mandatory return requirement of Article 7 creates a problem for EU countries, such as Italy, that protect the BFP absolutely, as well as other civil law countries, such as France, Belgium, Germany, and the Netherlands, that protect a BFP after the statute of limitations expires. According to Article 7, a BFP who gains legal title to an artwork in a civil law country may nevertheless lack the legal ability to keep the item. For those countries whose laws protect the BFP absolutely, Article 7 comes into direct conflict with such laws; requiring a BFP to return cultural property to the original owner strips the BFP of absolute protection.

Out of eighty-eight state parties to the UNESCO Convention, the only EU countries that have ratified the Convention through 1997 are France, Greece, Italy, Portugal, and Spain. Thus, the Convention's utility has been marginal because those countries in western Europe with large art markets have not become parties to the Convention.¹²⁴ Reasons that western European nations refused to sign the Convention include: their belief that it con-

¹¹⁹ See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the text of Article 7(b)(ii), see *supra* note 111.

¹²⁰ However, national implementation legislation might incorporate time limitations. See Prott, *supra* note 95, at 66.

¹²¹ See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the text of Article 7(b)(ii), see *supra* note 111.

¹²² See UNESCO Convention, *supra* note 104, art. 17(5).

Article 17(5) states:

At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

¹²³ See, e.g., Prott, *supra* note 95, at 60; Hoffman, *supra* note 4, at 5. For the text of Article 7(b)(ii), see *supra* note 111.

¹²⁴ See Hughes & Wright, *supra* note 1, at 225.

flicts with common market regulations; that it would force them to return items housed in their museums; and that they are capable of preventing looting of their own archaeological sites without the Convention's assistance.¹²⁵ The United Kingdom ("UK"), for example, is known to have a large art market, but did not sign the Convention because it believed the Convention's definition of cultural property is too broad¹²⁶ and that the request and return process is unnecessarily bureaucratic.¹²⁷ The UK additionally declined to sign the Convention because it preferred to rely on dealers' and museums' codes,¹²⁸ it regarded the national inventory required by Article 5 as inexpedient,¹²⁹ and it opposed the Convention's interference with rights of ownership.¹³⁰

IV. THE EU DIRECTIVE ON THE RETURN OF CULTURAL OBJECTS UNLAWFULLY REMOVED FROM THE TERRITORY OF A MEMBER STATE

On March 15, 1993, the Council of Ministers of what is now the EU enacted the Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State ("Directive").¹³¹ The Directive reflects the EU's desire to protect the cultural property of its Member States in light of recent changes in the EU's structure.

The signing of the European Economic Community Treaty of Rome ("EEC Treaty") in 1957 signaled the European Economic Community's early attempt to remove restrictions on the flow of European "goods, persons, services, and capital."¹³² Thereafter, the Single European Act

¹²⁵ See CONKLIN, *supra* note 44, at 281.

¹²⁶ Countries with large art markets, such as the UK, are concerned that a broad definition of items covered by the Convention will curtail their thriving art markets.

¹²⁷ See John Carvel, *Pillagers with an Eye for Profit Strip the Former Soviet Bloc of its Artistic Heritage as 'Cultural Cleansing' to Order Sweeps over Central and Eastern Europe*, GUARDIAN, Nov. 15, 1993, at 22, available in LEXIS, News Library, Guardn File.

¹²⁸ See Barbara Hoffman, *How Unidroit Protects Cultural Property*, Part II, N.Y.L.J., Mar. 10, 1995, at 5, available in LEXIS, News Library, Nylawj File. The standard museum code prohibits a museum from receiving any object acquired by illegal means. See Norman Palmer, *Recovering Stolen Art*, 47 CURRENT LEGAL PROBLEMS 215, 239-40 (1994). A dealers' code provides the same for members of a relevant group of dealers. *Id.* However, both of these codes give no rights to dispossessed owners. *Id.*

¹²⁹ See UNESCO Convention, *supra* note 104, art. 5(b). For the full text of Article 5(b), see *supra* note 117.

¹³⁰ See Hoffman, *supra* note 4, at 5.

¹³¹ See Council Directive 93/7/EEC of 15 March 1993 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, 1993 O.J. (L 74) 74 [hereinafter Directive]. Although this directive is more commonly referred to as the "EC Directive," I have chosen to refer to it as the "EU Directive" to make it clear that the Directive applies to EU Member States.

¹³² See Short, *supra* note 64, at 640; see also Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (as amended by the Single European Act ("SEA"), Feb. 28, 1986, 2 C.M.L.R. 741 (1987)) [hereinafter EEC Treaty]. Key portions of the preamble to the EEC Treaty state that the Member States of the EEC are:

("SEA") amended the EEC Treaty in 1987 in order to achieve the removal of internal frontiers by January 1, 1993.¹³³ Through these two instruments, the European Community (today increasingly referred to as the European Union) thus eliminated customs, baggage, and passport checks, although a Member State retains control over the movement of goods within its territory.¹³⁴

The EU's first attempt at protecting artwork located within the territories of its Member States was set out in the EEC Treaty. Article 9 and Articles 30 through 34 of the EEC Treaty, as amended by the SEA, guarantee freedom of movement of goods.¹³⁵ Article 34 of the EEC Treaty prohibits

Determined to establish the foundations of an ever closer union among the European peoples,

Decided to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,

Directing their efforts to the essential purpose of constantly improving the living and working conditions of their peoples,

Recognising that the removal of existing obstacles calls for concerted action in order to guarantee a steady expansion, a balanced trade and fair competition,

Anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and by mitigating the backwardness of the less favoured,

Desirous of contributing by means of a common commercial policy to the progressive abolition of restrictions on international trade

¹³³ See SEA, *supra* note 132.

¹³⁴ See Short, *supra* note 64, at 641.

¹³⁵ See EEC Treaty, *supra* note 132, arts. 9, 30-34.

Article 9 states:

1. The Community shall be based upon a customs union covering the exchange of all goods and comprising both the prohibition, as between Member States, of customs duties on importation and exportation and all charges with equivalent effect and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Chapter 1, Section 1 and of Chapter 2 of this Title shall apply to products originating in Member States and also to products coming from third countries and having been entered for consumption in Member States.

Article 30 states:

Quantitative restrictions on importation and all measures with equivalent effect shall, without prejudice to the following provisions, hereby be prohibited between Member States.

Article 31 states:

Member States shall refrain from introducing as between themselves any new quantitative restrictions or measures with equivalent effect.

This obligation shall, however, only apply to the level of liberalisation attained in application of the decisions of the Council of the Organisation for European Economic Co-operation of 14 January 1955. Member States shall communicate to the Commission, not later than six months after the date of the entry into force of this Treaty, the lists of the products liberalised by them in application of these decisions. The lists thus communicated shall be consolidated between Member States.

Article 32 states:

Member States shall, in their mutual trade, refrain from making more restrictive the quotas or measures with equivalent effect in existence at the date of the entry into force of this Treaty.

Such quotas shall be abolished not later than at the date of the expiry of the transitional period. In the course of this period, they shall be progressively abolished under

any provisions that aim to restrict or result in restricting exports while leaving national trade untouched.¹³⁶ However, Article 36 of the EEC Treaty provides an exemption to Articles 30 to 34 out of deference to each Member State's interest in the protection of what it perceives to be its national heritage.¹³⁷ Article 36 is specifically designed to protect "national treasures of artistic value,"¹³⁸ as defined by each Member State. It allows quantitative restrictions on imports and exports to protect national art treasures,¹³⁹ but it does not permit Member States to develop protective measures as a pretense for restricting intra-community trade.¹⁴⁰

In November 1993, the EEC Treaty was officially renamed the Treaty Establishing the European Community ("EC Treaty").¹⁴¹ Dropping the word "Economic" from its title symbolized the expanded political, social, and other non-economic roles of the Community on European affairs.¹⁴² At the same time, the Maastricht Treaty on European Union ("TEU") was superimposed over the EEC Treaty, thereby adding certain common provisions as well as coverage of foreign and security policy and justice and home affairs.¹⁴³

the conditions specified below.

Article 33 states:

1. Each of the Member States shall, at the end of one year after the entry into force of this Treaty, convert any bilateral quotas granted to other Member States into global quotas open, without discrimination, to all other Member States . . .

Article 34 states:

1. Quantitative restrictions on exportation and any measures with equivalent effect shall hereby be prohibited as between Member States.
2. Member States shall abolish, not later than at the end of the first stage, all quantitative restrictions on exportation and any measures with equivalent effect in existence at the date of the entry into force of this Treaty.

¹³⁶ See EEC Treaty, *supra* note 132, art. 34.

¹³⁷ See Thomas Von Plehwe, *European Union and the Free Movement of Cultural Goods*, 20 EUR. L. REV. 431, 432 (1995). See also EEC Treaty, *supra* note 132, art. 36.

Article 36 states:

The provisions of Articles 30 to 34 inclusive shall not be an obstacle to prohibitions or restrictions in respect of importation, exportation or transit which are justified on grounds of public morality, public order, public safety, the protection of human or animal life or health, the preservation of plant life, the protection of national treasures of artistic, historical or archaeological value or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.

¹³⁸ See generally, EEC Treaty, *supra* note 132, art. 36. For the full text of Article 36, see *supra* note 137.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See RALPH H. FOLSOM, EUROPEAN UNION LAW IN A NUTSHELL 113 (1995).

¹⁴² *Id.*

¹⁴³ See Maastricht Treaty on European Union, Feb. 7, 1992, 1 C.M.L.R. 719, reprinted in 31 I.L.M. 247, 255 (1992) [hereinafter TEU]; see also P.S.R.F. MATHJSEN, A GUIDE TO EUROPEAN UNION LAW 4 (1995). The resulting document is titled the "Treaty on European Union Together with the Treaty Establishing the European Community."

The TEU has introduced amendments to the EEC Treaty that place greater emphasis on the protection of "cultural heritage."¹⁴⁴ Article 128 of the EC Treaty expands the EU's scope of action to include cultural measures,¹⁴⁵ by calling for encouragement of national cultures and for cooperation among EU Member States to conserve and safeguard "cultural heritage."¹⁴⁶ Member States retain the discretion to define the class of objects to be considered "national treasures" within the meaning of Article 36.¹⁴⁷

The establishment on January 1, 1993 of the single European market, which largely abolished internal frontiers, raised the question of how Member States were to use the exemption granted under Article 36 of the EC Treaty in their endeavor to safeguard what they claimed to be "national treasures."¹⁴⁸ Dealers throughout Europe and the governments of the art-importing nations of northern Europe, such as Germany, the Netherlands, Belgium, and Great Britain, favored a *laissez-faire* approach; that is, they favored fewer restrictions on the import and export of cultural property that would be permissible under the Article 36 exemption.¹⁴⁹ One way in which a *laissez-faire* approach could be achieved would be with a narrower definition of "national treasure." A directive that could limit the breadth of this definition would facilitate free market values by restricting the number of items that could be excepted from the unrestricted internal market. Britain in particular, with the Community's most successful auction houses, was most in favor of a *laissez-faire* approach.¹⁵⁰

¹⁴⁴ See Von Plehwe, *supra* note 137, at 432.

¹⁴⁵ See TEU, *supra* note 143, art. 128(1). Article 128(1) states:

The community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

¹⁴⁶ See TEU, *supra* note 143, art. 128(2). Article 128(2) states:

Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

--improvement of the knowledge and dissemination of the culture and history of the European peoples;

--conservation and safeguarding of cultural heritage of European significance;

--non-commercial cultural exchanges;

--artistic and literary creation, including in the audiovisual sector.

¹⁴⁷ For the full text of Article 36, see *supra*, note 137; see also Von Plehwe, *supra* note 137, at 433.

¹⁴⁸ See Von Plehwe, *supra* note 137, at 442. In other words, the removal of customs controls raised concerns that existing regulations would be insufficient to protect "national treasures." See Hughes & Wright, *supra* note 1, at 220.

¹⁴⁹ See CONKLIN, *supra* note 44, at 206; see also Alan Riding, *Europe Unifying, Has Fears for Its Art*, N.Y. TIMES, Dec. 28, 1992, at 9, available in LEXIS, News Library, Nyt File.

¹⁵⁰ See Riding, *supra* note 36, at 9. Auction houses similarly opposed a broad definition of "national treasure," as interpreted under Article 36, out of their belief that this would suffocate the art trade. See THE DESKBOOK OF ART LAW, *supra* note 86, at B-9.

In contrast, countries such as Italy, Greece, Spain, France, and Portugal, which wanted to protect their cultural property from illegal export, and, based on their past inability to prevent the pillaging and looting of their national treasures, sought tighter restrictions on the movement of art and antiquities throughout Europe.¹⁵¹ For these states, a continued broad definition of "national treasure" and additional restrictions on the movement of cultural property between states would better safeguard their cultural property. Rather than regarding cultural property mainly as a marketable commodity, these countries view their cultural property as an important part of their national cultural identities.¹⁵² These southern European Member States argued that when EC border controls disappeared in January 1993, irreplaceable pieces would flow northwards into the hands of rich art dealers profiting from the removal of restrictions.¹⁵³ In response, northern Member States feared that the southern countries would rely on new EC rules and demand the mass restitution of the many classical and Renaissance treasures in northern museums.¹⁵⁴

The Directive was ultimately enacted by the Council of Ministers based on advice from other governing institutions. The major governing institutions of the EU are the Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice.¹⁵⁵ Article 189 of the EC Treaty clarifies the powers of the Council of Ministers, the European Parliament, and the Commission, in accordance with the Treaty, to make regulations and issue directives,¹⁵⁶ which establish EU

¹⁵¹ See Riding, *supra* note 36, at 9.

¹⁵² For a discussion of the "cultural" value of artwork, see *supra* text accompanying note 61.

¹⁵³ See George Brock, *UK Reigns in Art Sales Threatened*, TIMES (London), May 19, 1992, available in LEXIS, News Library, Times File.

¹⁵⁴ See Tom Walker, *Greece Turns to EC to Regain Marbles*, TIMES (London), July 4, 1991, available in LEXIS, News Library, Times File.

¹⁵⁵ See FOLSOM, *supra* note 141, at 34.

¹⁵⁶ See TEU, *supra* note 143, art. 189. Article 189 states:

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions . . .

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods

The Council of Ministers consists of representatives of the governments of the Member States. See FOLSOM, *supra* note 141, at 51. The Commission drafts legislative proposals that the Council of Ministers has the power to adopt into law. *Id.* at 64. The Commission's legislative proposals are influenced by what it believes the Council will accept, although the Council may amend legislative proposals by unanimous vote. *Id.* at 39. Commissioners are civil servants, who are appointed by Member States but act independently from their home governments. *Id.* at 65. The Commission is thus referred to as the "independent guardian of the treaties." *Id.* at 62.

policy.¹⁵⁷ The vast majority of the legislative acts are directives,¹⁵⁸ which Member States must implement in whatever way is appropriate to their national legal system and within a given time frame.¹⁵⁹ The Commission, which has the sole power to propose and initially draft legislative texts,¹⁶⁰ issued the Directive. Following the requisite review by the European Parliament and the Economic and Social Committee, the Council of Ministers enacted the Directive on March 15, 1993, in accordance with the EC Treaty legislative process.¹⁶¹

The Directive's language reflects the major EU governing institutions' awareness of the need to address the question of how to protect cultural property in light of the creation of the internal market in 1993.¹⁶² The Directive seeks to introduce some measure of cooperation between Member States following the removal of border controls.¹⁶³ Rather than using the term "national treasures" as in Article 36 of the EC Treaty, the Directive uses the term "cultural objects."¹⁶⁴ According to the Directive, "cultural object" refers to an object that belongs to one of the categories listed in the Directive's annex or is part of the public collections of museums, archives or libraries, so long as it is also a "national treasure" under national legislation in the context of Article 36 of the EC Treaty.¹⁶⁵ While the Annex is not

The European Parliament neither has the power to propose legislation nor to adopt it, but plays a consultative role. *Id.* at 39. The European Parliament members are directly elected by EU Member States, and currently there are 99 Members of Parliament. *Id.* at 40-41.

¹⁵⁷ See *id.* at 38.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See TEU, *supra* note 143, art. 189(b). Article 189(b) states:

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council

...

¹⁶¹ For a complete description of the steps that the Council must take in order to enact a directive, see full text of TEU, *supra* note 143, arts. 189(a), 189(b), and 189(c).

¹⁶² See Directive, *supra* note 131, pmb1.

The preamble states in relevant part:

Whereas Article 8A of the [EEC] Treaty provides for the establishment, not later than, 1 January 1993, of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the treaty;

Whereas, under the terms and within the limits of Article 26 of the treaty, Member States will, after 1992, retain the right to define their national treasures and to take the necessary measures to protect them in this area without internal frontiers. . . .

¹⁶³ See Von Plehwe, *supra* note 137, at 443.

¹⁶⁴ See Directive, *supra* note 131.

¹⁶⁵ See Directive, *supra* note 131, art. 1(1).

Article 1(1) states:

1. "Cultural object" shall mean an object which:

-is classified, before or after its unlawful removal from the territory of a Member State, among the 'national treasures possessing artistic, historic or archaeological

meant to substitute Member States' definitions of "national treasures" under Article 36, it does require that Member States' definitions of "national treasure" satisfy broad criteria in order to fall within the Directive's purview.¹⁶⁶

The Directive does not distinguish between "stolen" and "illegally exported" art objects,¹⁶⁷ but rather simply states that it focuses on "[c]ultural objects which have been illegally removed from the territory of a Member State."¹⁶⁸ It also establishes the legal procedure for the return of those cultural objects which are unlawfully removed from one Member State and re-surface in another.¹⁶⁹ When a person or entity unlawfully removes a cultural object, the Member State from whose territory the object has been removed ("requesting Member State") may initiate proceedings against the holder ("owner or possessor") before the courts of the country on whose territory a cultural object is located ("requested Member State"), with the aim of securing the return of the cultural object concerned.¹⁷⁰ Proceedings must be brought within one year following a Member State's discovery of a cul-

value' under national legislation or administrative procedures within the meaning of Article 36 of the [EC] Treaty, and

-belongs to one of the categories listed in the Annex or does not belong to one of these categories but forms an integral part of:

-public collections listed in the inventories of museums, archives or libraries' conservation collection

2. "Unlawfully removed from the territory of a Member State" shall mean:

-removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EEC) No. 3911/92 [on the export of cultural goods], or

-not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

¹⁶⁶ See Directive, *supra* note 131, pmbl. For the relevant text of the preamble, see *supra* note 162. One way in which the Annex limits the breadth of "national treasures" that are protected by the Directive is through financial thresholds. See Directive, *supra* note 131, Annex, pt. B.

¹⁶⁷ *Id.* For an explanation of the distinction between "illegal export" and "private theft," see *supra* note 47.

¹⁶⁸ See Directive, *supra* note 131, art. 2.

Article 2 states: "Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive." This stated goal is broad enough to include both stolen and illegally exported cultural property.

¹⁶⁹ See Directive, *supra* note 131, art. 5.

Article 5 states:

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, failing him, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

¹⁷⁰ *Id.* In other words, when Member State X determines that a cultural object has been stolen from within its borders and is currently located in Member State Y's borders, Member State X may initiate proceedings against the present holder of the object in country Y's courts.

tural object's location and its possessor.¹⁷¹ The requesting state must also initiate proceedings within thirty years of the object's unlawful removal, with a limited exception for certain public collections and ecclesiastical goods.¹⁷² Finally, the requesting state must provide suitable documentation,¹⁷³ and the claim will succeed if the court determines that the object satisfies the definition of "cultural property" under Article 1.¹⁷⁴

The Directive also provides for a court to order compensation for the possessor upon the return of the cultural property to a requesting state.¹⁷⁵ If the court orders the return of the object, the buyer will be entitled to fair compensation provided that the court is satisfied that the buyer acted with "due care and attention" in purchasing the object, the burden of proof depending on the law of the requested state.¹⁷⁶ The Directive, however, does not define what factors would satisfy the "due care and attention" standard. The requesting Member State is also responsible for paying the costs en-

¹⁷¹ See Directive, *supra* note 131, art. 7(1).

Article 7(1) states in relevant part:

1. Member States shall lay down in their legislation that the return proceedings provided for in this Directive may not be brought more than one year after the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder.

¹⁷² *Id.*

¹⁷³ See Directive, *supra* note 131, art. 5.

Article 5 states in relevant part:

Proceedings may be brought only where the document initiating them is accompanied by:

- a document describing the object covered by the request and stating that it is a cultural object,
- a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

¹⁷⁴ See Directive, *supra* note 131, arts. 1, 8. For a full text of Article 1, see *supra* note 165.

Article 8 states:

Save as otherwise provided in Articles 7 and 13, the competent court shall order the return of the cultural object in question where it is found to be a cultural object within the meaning of Article 1(1) and to have been removed unlawfully from national territory.

¹⁷⁵ See Directive, *supra* note 131, art. 9.

Article 9 states:

Where return of the object is ordered, the competent court in the requested States shall award the possessor such compensation as it deems fair according to the circumstances of the case, provided that it is satisfied that the possessor exercised due care and attention in acquiring the object.

The burden of proof shall be governed by the legislation of the requested Member State.

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by that means.

The requesting Member State shall pay such compensation upon return of the object.

¹⁷⁶ *Id.* In simpler terms, this would mean that if a Member State Y court orders the return of the object to Member State X, Member State Y can request compensation for the BFP of the object, assuming that the buyer can prove that he or she acted with "due care and attention" in purchasing the object.

tailed in returning the cultural object.¹⁷⁷ In addition, a state may simultaneously file a separate action to recover its expenses from the person responsible for the unlawful removal.¹⁷⁸ Finally, the Directive provides for arbitration proceedings as an alternative to legal proceedings if the requesting state and possessor of the cultural property both agree.¹⁷⁹

Although EU Member States were supposed to have enacted national laws and regulations in order to comply with the Directive according to Article 18,¹⁸⁰ not all Member States have done so. Article 5 of the TEU requires EU Member States to fulfill their obligations under EU directives.¹⁸¹ In the event that an EU Member State does not comply with a directive,

¹⁷⁷ See Directive, *supra* note 131, art. 10.

Article 10 states:

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State

¹⁷⁸ See Directive, *supra* note 131, art. 11.

Article 11 states:

Payment of the fair compensation and of the expenses referred to in Articles 9 and 10 respectively shall be without prejudice to the requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

¹⁷⁹ See Directive, *supra* note 131, art. 4(6).

Article 4(6) states:

Member States' central authorities shall cooperate and promote consultation between the Member States' competent national authorities. The latter shall in particular:

* * *

6. act as intermediary between the possessor [sic] and/or holder and the requesting Member State with regard to return. To this end, the competent authorities of the requested Member States may, without prejudice to Article 5, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested State and provided that the requesting State and the possessor or holder give their formal approval.

¹⁸⁰ See Directive, *supra* note 131, art. 18.

Article 18 states:

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within nine months of its adoption, except as far as the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands are concerned, which must conform to this Directive at the latest twelve months from the date of its adoption. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

¹⁸¹ See TEU, *supra* note 143, art. 5.

Article 5 states:

Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the community. They shall facilitate the achievement of the community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.

Article 169 of the TEU allows the Commission, after first filing a "reasoned opinion" on the matter, to file a claim with the European Court of Justice ("ECJ") against the noncomplying state.¹⁸²

Member States were supposed to implement the laws, regulations, and administrative provisions associated with the Directive by December 15, 1993, and Belgium, Germany, and the Netherlands were granted until March 15, 1994 to implement the Directive.¹⁸³ In October 1997, the Commission announced its decision to initiate ECJ proceedings against Germany, Greece, and Italy, and more recently against Austria, for failing to implement the Directive.¹⁸⁴ Although it is not clear why these states have failed to comply with the Directive, both Greece and Germany indicated their dissatisfaction with it as early as 1992.¹⁸⁵ Other states may be suffering from bureaucratic backlogs in their legislative institutions.¹⁸⁶

V. THE UNIDROIT CONVENTION ON THE INTERNATIONAL RETURN OF STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS (1995)

Previously, an arm of the League of nations from 1926 until 1940, Unidroit (a French term for "unification of law") was reestablished as an independent governmental organization in 1940.¹⁸⁷ Its membership is close to sixty states, including EU members.¹⁸⁸ Article 1 of the Unidroit statute

¹⁸² See TEU, *supra* note 143, art. 169.

Article 169 states: "If the Commission considers that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the state concerned the opportunity to submit its observations."

Close to 80% of the disputes do not reach the ECJ because they are settled at this stage. See FOLSOM, *supra* note 141, at 113. In a small percentage of cases, the Commission will file suit, which can result in the ECJ fining a Member State. *Id.* at 113-14.

¹⁸³ See Directive, *supra* note 131, art. 18. For the full text of Article 18, see *supra* note 180.

¹⁸⁴ See e-mail correspondence with G. Callove, Department Head of the European Commission Director General's Office, Apr. 23, 1998 (copy on file with the *Northwestern Journal of International Law & Business*).

¹⁸⁵ Ten out of twelve Member States approved the Directive, with Greece voting against it and Germany abstaining. Greece wanted a suspension of the limitation period between the time when the court of a Member State where a stolen object is located has begun a restitution procedure and the time when the identity of the owner and the object's location are established. See *Culture: Internal Market Council Approves Protection for Cultural Treasures*, EUR. REP., Nov. 14, 1992, available in LEXIS, Intlaw Library, Ecnews File. Since the vote of approval, three additional Member States have joined the EU. For a complete list of current members, see *supra* note 48.

¹⁸⁶ See, e.g., Marina Schneider, *The Unidroit Convention on Cultural Property: State of Play and Prospects for the Future*, 3 UNIFORM LAW REV. 494, at 504 (1997) (noting Italy's slowness in ratifying the Unidroit Convention as a function of its crowded Parliamentary docket, and pointing out that Italy has yet to implement the Directive).

¹⁸⁷ See Hughes & Wright, *supra* note 1, at 229.

¹⁸⁸ *Id.* at 230. As of January 1, 1998, Unidroit had 57 Member States. See Correspondence with Marina Schneider, Unidroit Research Officer, Jan. 14, 1998 (on file with author).

explains that the organization's purpose "is to examine ways of harmonizing and coordinating the private law of States and groups of States, and to prepare gradually for the adoption by various States of uniform rules of private law."¹⁸⁹ Unidroit furthers this purpose by preparing drafts of laws, conventions, and agreements on private law matters that may be adopted by states.¹⁹⁰

Work on the Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects ("Unidroit Convention") began in 1988,¹⁹¹ at the request of UNESCO. UNESCO made this request because of the enormous surge in the illegal trafficking of works of art and antiquities and the difficulty of implementing the private law aspects of Article 7(b)(ii) of the UNESCO Convention regarding requests for the recovery and return of stolen cultural property.¹⁹² UNESCO turned to Unidroit to resolve the conflict in national laws applying to cultural property in a way that complemented the 1970 UNESCO Convention.¹⁹³ UNESCO representatives attended the drafting meetings of the Unidroit Convention, both because of UNESCO's experience on the subject and in order to ensure that the Unidroit Convention would be compatible with the UNESCO Convention.¹⁹⁴ Further evidence of the cooperative relationship between UNESCO and Unidroit in their efforts to protect cultural property may be found in the Unidroit Convention itself.¹⁹⁵

The Unidroit Convention seeks to combat the illegal traffic in cultural objects by expanding the rights of those who suffer losses and by expanding the scope of objects subject to its provisions beyond those which are protected under current conventions and treaties. The Unidroit Convention defines "cultural property" very broadly,¹⁹⁶ mirroring the definition of

¹⁸⁹ *Id.*; Forbes, *supra* note 61, citing Marina Schneider (Unidroit Research Officer), about the Unidroit Conference, delivered at London Conference on Art Theft, Nov. 1995, at 2.

¹⁹⁰ See Hughes & Wright, *supra* note 1, at 230.

¹⁹¹ See Introductory Note by Harold S. Burman, Final Act of the Diplomatic Conference for the Adoption on the Draft Unidroit Convention of the International Return of Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322 (1995) [hereinafter Unidroit Convention].

¹⁹² See UNESCO Convention, *supra* note 104, art. 7(b)(ii); Hoffman, *supra* note 4, at 5; see also Richard Crewdson, *Putting Life into a Cultural Property Convention--Unidroit: Still Some Way to Go*, 17 INT'L LEGAL PRAC. 45 (1992); Peter H. Pfund, *International Unification of Private Law: A Report on U.S. Participation--1987-88*, 22 INT'L L. 1157, 1162 (1988). For the full text of Article 7(b)(ii) of the UNESCO Convention, see *supra* note 111. For a discussion of the difficulties with Article 7(b)(ii), see *supra* text accompanying note 123.

¹⁹³ See Prott, *supra* note 95, at 61.

¹⁹⁴ *Id.*

¹⁹⁵ See Unidroit Convention, *supra* note 191, pmbl (emphasizing that the Unidroit Convention "recogniz[es] the work of various bodies to protect cultural property, particularly the 1970 UNESCO Convention. . .").

¹⁹⁶ See Unidroit Convention, *supra* note 191, art. 2 and Annex.

Article 2 states:

“cultural property” in the UNESCO Convention, but without requiring that a state “designate” its cultural objects.¹⁹⁷ The Unidroit Convention also clearly distinguishes between two complicated legal areas: the return of stolen objects (Articles 3 and 4)¹⁹⁸ and the return of illegally exported objects (Articles 5-7).¹⁹⁹

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

The following categories are listed in the Annex:

- (a) Rare collections and specimens of fauna, flora minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings, and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

¹⁹⁷ See *id.* art. 2. For a discussion of UNESCO’s definition of “cultural object,” see *supra* text accompanying notes 108-110.

¹⁹⁸ See Unidroit Convention, *supra* note 191, arts. 3, 4.

Article 3 states:

- (1) The possessor of a cultural object which has been stolen shall return it.
- (2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.
- (3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.
- (4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor.

(5) Notwithstanding the provisions of the preceding paragraph, any contracting State may declare that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a contracting State making such a declaration shall also be subject to that time limitation.

(6) A declaration referred to in the preceding paragraph shall be made at the time of signature, ratification, acceptance, approval or accession.

(7) For the purposes of this convention, a "public collection" consists of a group of inventoried or otherwise identified cultural objects owned by:

- (a) a Contracting State;
- (b) a regional or local authority of a contracting State;
- (c) a religious institution in a Contracting State; or
- (d) an institution that is established for an essentially cultural, educational or scientific purpose in a contracting state and is recognised in that State as serving the public interest.

(8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community's traditional or ritual use, shall be subject to the time limitation applicable to public collections.

Article 4 states:

(1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

(2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation where to do so would be consistent with the law of the state in which the claim is brought.

(3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.

(4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

¹⁹⁹ See Unidroit Convention, *supra* note 191, arts. 5-7.

Article 5 states:

(1) A Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State.

(2) A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of the permit shall be deemed to have been illegally exported.

(3) The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests:

- (a) the physical preservation of the object or of its context;
- (b) the integrity of a complex object;
- (c) the preservation of information of, for example, a scientific or historical character;

(d) the traditional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State.

(4) Any request made under paragraph 1 of this article shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met.

(5) Any request for return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article.

Article 6 states:

(1) The possessor of a cultural object who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting State of fair and reasonable compensation, provided that the possessor neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported.

(2) In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State.

(3) Instead of compensation, and in agreement with the requesting State, the possessor required to return the cultural object to that State, may decide:

- (a) to retain ownership of the object; or
- (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State who provides the necessary guarantees.

(4) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State, without prejudice to the right of that state to recover costs from any other person.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

Article 7 states:

(1) The provisions of this Chapter shall not apply where:

- (a) the export of a cultural object is no longer illegal at the time at which the return is requested; or
- (b) the object was exported during the lifetime of the person who created it within a period of fifty years following the death of that person.

(2) Notwithstanding the provisions of sub-paragraph (b) of the preceding paragraph, the provisions of this Chapter shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community.

Articles 3 and 4 cover the return of stolen objects and expand the rights of those who suffer losses by providing for both public and private claims.²⁰⁰ In order to recover a stolen object, a "claimant" must bring a claim before a court of the competent authorities of the state in which the cultural object is located.²⁰¹ The use of the word "claimant" creates a private right of action by not requiring that the party bringing a claim be a state. On the other hand, Articles 5-7, which govern illegally exported cultural property, only allow for a claim by a "requesting State."²⁰² Alternatively, the parties involved in a dispute over property may agree to resolve the dispute through arbitration.²⁰³

The basis of the Unidroit Convention's provisions regarding stolen property is that the possessor of the stolen cultural object must return it, even if it was acquired in good faith.²⁰⁴ While a claimant need not satisfy any documentation requirements in order to file a successful claim, a claimant must file for the return of the stolen object within three years of locating the object and within fifty years of the object's disappearance.²⁰⁵ Exceptions may be made for a narrow list of objects, and states may expand the time frame if they so choose.²⁰⁶

The Unidroit Convention also provides that the possessor of a stolen object be entitled to "fair and reasonable compensation" at the time that the cultural object is returned to its original owner, so long as the possessor can prove that it acquired the object through the exercise of "due diligence."²⁰⁷ The Unidroit Convention lists specific factors that will help determine whether a possessor has exercised "due diligence," including proof that the

²⁰⁰ See Unidroit Convention, *supra* note 191, arts. 3, 4. For the full text of Articles 3 and 4, see *supra* note 198.

²⁰¹ See Unidroit Convention, *supra* note 191, arts. 3, 8(1). For the full text of Article 3, see *supra* note 198.

Article 8(1) states:

A claim under Chapter II [Articles 3 and 4] and a request under Chapter III [Articles 5-8] may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located, in addition to the courts or other competent authorities otherwise having jurisdiction under the rules in force in Contracting States.

²⁰² See Unidroit Convention, *supra* note 191, art. 5. For the full text of Article 5, see *supra* note 199.

²⁰³ See Unidroit Convention, *supra* note 191, art. 8(2). Article 8(2) states: "the parties may agree to submit the dispute to any court or other competent authority or to arbitration." *Id.*

²⁰⁴ See Unidroit Convention, *supra* note 191, arts. 3(1)-(2). For the full text of Article 3, see *supra* note 198.

²⁰⁵ See Unidroit Convention, *supra* note 191, art. 3(3). For the full text of Article 3, see *supra* note 198.

²⁰⁶ See Unidroit Convention, *supra* note 191, arts. 3(4)-(5). For the full text of Article 3, see *supra* note 198.

²⁰⁷ See Unidroit Convention, *supra* note 191, art. 4(1). For the full text of Article 4, see *supra* note 198.

possessor checked to see if the item was listed in a register of stolen cultural objects.²⁰⁸ While the claimant is responsible for the compensation payment, attempts may be made to have the transferor pay the compensation in some cases, and the claimant may also seek to recover the amount from another person in a separate action.²⁰⁹

The final draft of the Unidroit Convention was adopted in June 1995 and was open for signature until June 1996.²¹⁰ The five EU members that signed the Unidroit Convention by June 30, 1996 were Finland, France, Italy, the Netherlands, and Portugal.²¹¹ Of these states, Italy is currently the furthest along in the ratification process.²¹² By the end of 1997, no additional EU members opted to choose the non-signatory route of accession to the Unidroit Convention, and none of the EU states that had already signed the Convention had completed the ratification process.²¹³ However, the Unidroit Convention itself will almost certainly enter into force in the near future, as it already has four out of the five required ratifications.²¹⁴

Although Holland has indicated that it will sign the Unidroit Convention, other leading art market countries, such as the UK and Germany, are opposed to ratifying it.²¹⁵ Germany is dissatisfied with the provisions applying to illegal export and the definition of cultural property.²¹⁶ The UK resists the Unidroit Convention's requirement that a possessor must return stolen property, a provision that also faces strong opposition from domestic art market interest groups.²¹⁷

²⁰⁸ See Unidroit Convention, *supra* note 191, art. 4(4). For the full text of Article 4, see *supra* note 198.

²⁰⁹ See Unidroit Convention, *supra* note 191, arts. 4(2)-(3). For the full text of Article 4, see *supra* note 198.

²¹⁰ See Introductory Note by Harold S. Burman, *supra* note 191. The final Convention was approved by 37 states, with 17 states abstaining and five states voting against the Convention. *Id.*

²¹¹ See Faxed Correspondence with Malcolm Evans, Secretary-General of Unidroit, Sept. 18, 1996 (on file with author). For a list of current EU Member States, see *supra* note 48. Non-signatory states can still become parties to the Convention by ratification. See Unidroit Convention, *supra* note 191, art. 11.

²¹² See Faxed Correspondence with Marina Schneider, Unidroit Research Officer, Dec. 17, 1997 (on file with author).

²¹³ *Id.*

²¹⁴ See Unidroit Convention, *supra* note 191, art. 12(1). Article 12(1) states: "[t]his Convention shall enter into force on the first day of the sixth month following the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession." The four countries that ratified the Unidroit Convention by the end of 1997 are Lithuania, Paraguay, Peru, and China. See Schneider, *supra* note 186, at 502.

²¹⁵ See Christian von Faber-Castell, *Swiss Government Supports Unidroit*, ART NEWSL., July 9, 1996, at 3.

²¹⁶ See Schneider, *supra* note 186, at 502.

²¹⁷ *Id.* It appears that the strong opposition of British auction houses and dealers to ratification has temporarily prevailed over other domestic interest groups to influence the government to oppose ratification. See *Unplundering Art*, ECONOMIST, Dec. 20, 1997, available

Art market countries also oppose ratifying the Unidroit Convention because they fear that a dealer of any international fine arts fair in any Unidroit country could be bankrupted by accusations from any visitor who claims that the dealer is handling stolen goods.²¹⁸ These countries fear that such a claim would result in confiscation of the dealer's paintings and lead to legal action in which the dealer would receive no compensation for costs, even if the dealer proves his or her innocence.²¹⁹ This fear led the European Fine Art Foundation ("TEFAF") to warn that it will move the European Fine Art Fair from Maastricht to another city in a new country if Holland ratifies the Unidroit Convention, which Holland is expected to do largely due to pressure from Dutch museums.²²⁰

Greece is also not expected to ratify the Unidroit Convention in the near future due to its belief that the Convention's prospective-only application does not offer it sufficient protection for its cultural property.²²¹ Additional general criticism of the Unidroit Convention focuses on the still-ambiguous standard that a purchaser must meet in order to prove that he or she purchased an item in good faith, so as to be eligible for compensation upon returning the item to the original owner.²²²

in LEXIS, News Library, Econ File; Sarah Bosley, *Raider of Egypt's Lost Art*, GUARDIAN (London), June 19, 1997, at T2, available in LEXIS, News Library, Guardn File. This opposition to ratification prevailed under the previous British government as well. See Dalya Al-berge, *Ministers Urged to Back Campaign Against Art Theft*, TIMES (London), Nov. 18, 1989, available in LEXIS, News Library, Ttimes File. However, a combination of pressure from museums and various cultural organizations, as well as the ascendance of the Labour Party in 1997, may erode the UK's opposition to ratification. Thirty-four British museums and other archaeological and heritage groups are advocating for ratification of the Unidroit Convention. *Id.* Their position stems from their awareness of the need to help countries, such as India, Italy, and Egypt, to protect their cultural heritage by discouraging the trade in antiquities. *Id.*

²¹⁸ See *Maastricht vs. Unidroit*, ART NEWSL., Mar. 19, 1996, at 2.

²¹⁹ *Id.*

²²⁰ *Id.* at 1. One reason that Dutch museums might favor ratification is their awareness of the serious loss of cultural heritage experienced by art-source countries. *Id.* See also Schneider, *supra* note 186, at 506. For a discussion of the position of British museums, see *supra* note 217. Berlin's museums similarly advocate Germany's ratification of the Unidroit Convention. See Schneider, *supra* note 186, at 506.

²²¹ See Schneider, *supra* note 186, at 502.

²²² In a letter expressing his strong opposition to Unidroit, Leo Lemmens, Secretary of TEFAF, wrote:

Good faith is established by consulting every register of stolen artifacts all over the world. . . . The dealer only has a right to compensation if he can prove that he has consulted every possible source of information about the origin of the good. Compensation will then only be a fraction of the actual value of the good.

Geraldine Norman, *Dutch and Swiss Debate Unidroit--Fairs in Peril?*, ART & AUCTION, May 1996, at 27.

Although the Unidroit Convention generally defines "due diligence" in Article 4(4), the definition could be more specific in order to better guide buyers of artwork as to what is expected of them. For the full text of Article 4(4), see *supra* note 198.

VI. THE CURRENT LEGAL REGIME: HOW DOES IT FARE?

The UNESCO Convention, the Directive, and the Unidroit Convention do not go far enough to combat the growing problem of art theft in the EU for a number of reasons. First, only some EU members have ratified the UNESCO Convention²²³ and none have ratified the Unidroit Convention to date.²²⁴ Of those EU states that have not ratified one or both of the Conventions, some are not expected to do so at all.²²⁵ It is also unclear when, or if, the EU members that have not implemented the Directive will eventually comply with it.²²⁶ Second, the current legal regime would render the Conventions and the Directive inadequate even if all of the EU members were to ratify both Conventions and implement the Directive. This is both due to some of the shortcomings of the individual legal instruments as well as the need to combine a legal approach with other mechanisms outside of the current legal regime.

The main difference between the UNESCO Convention, the Directive, and the Unidroit Convention is in their different approaches to the problem of stolen art. While the UNESCO Convention and the Directive approach the problem from the perspective of government action,²²⁷ the Unidroit Convention takes a private action approach.²²⁸ This difference is seen in the different definitions of "cultural property"²²⁹ as well as in the provisions governing claims or requests for the return of cultural property.²³⁰

Because both the UNESCO Convention and the Directive leave it up to states to designate which items are considered "cultural property" or "national treasures,"²³¹ some or all artwork owned by particular museums, galleries, auction houses or collectors may not be covered by the UNESCO Convention or the Directive. In addition, both the UNESCO Convention and the Directive allow only states to make "requests" or initiate proceedings, respectively, to recover the stolen property.²³² Thus, it will be up to each Member State to decide whether to pursue a claim for the stolen artwork's recovery even if it designates some or all of the artwork owned by a particular museum, auction house, collector, or gallery as "cultural objects" within the UNESCO Convention's definition, or as "national treasures" within the Directive's definition of "cultural property." A state may choose not to pursue a claim on behalf of a private party, such as a collector, for

²²³ See *supra* text accompanying note 124.

²²⁴ See *supra* text accompanying note 212.

²²⁵ See *supra* text accompanying notes 124-130 and 215-222.

²²⁶ See *supra* text accompanying notes 183-186.

²²⁷ See *supra* text accompanying notes 113-115 and 170-179.

²²⁸ See *supra* text accompanying notes 200-202.

²²⁹ See *supra* text accompanying notes 116-118, 164-166, and 196-197.

²³⁰ See *supra* text accompanying notes 116-122, 169-174, and 201-206.

²³¹ See *supra* text accompanying notes 110, 165, and 166.

²³² See *supra* text accompanying notes 113-115 and 170.

any number of reasons. In the case of both the UNESCO Convention and the Directive, for example, a state making a claim must provide sufficient documentation,²³³ the bureaucratic nature of which may serve to deter states from filing claims in the first place. Under the UNESCO Convention, the failure of a church, museum, or similar institution to list an artwork in its inventory may serve to prevent the item's recovery²³⁴ and thereby deter a state from making a claim. A more likely reason that a state might not file a claim on behalf of a private party would be a financial disincentive: both the UNESCO Convention and the Directive require that the "requesting state" compensate the BFP and to pay the expenses involved in returning the "cultural object."²³⁵ Although it is not clear what the cost of compensating a BFP would be under either the UNESCO Convention or the Directive, one piece of art alone can cost thousands, if not millions of dollars. Under the Directive, a state would also have to pay for legal fees associated with filing a claim in a court.

In contrast to the UNESCO Convention's and Directive's focus on government action, the Unidroit Convention appears to cover all stolen artwork and creates a private right of action for private parties such as individuals and institutions.²³⁶ Because the Unidroit Convention's definition of "cultural property" is broad and does not rely on states to designate which items will be covered,²³⁷ it appears that all artwork owned by museums, galleries, auction houses, and collectors is covered by the Unidroit Convention. The Unidroit Convention's clear distinction between stolen and illegally exported cultural objects, both in its title and its provisions,²³⁸ is further evidence that the Unidroit Convention applies to artwork stolen from museums, galleries, auction houses, and collectors.²³⁹ In addition, because a private party may initiate a legal claim for recovery of stolen "cultural property" under the Unidroit Convention,²⁴⁰ a private party's interest in recovering the stolen artwork need not coincide with a state's desire to

²³³ See UNESCO Convention, *supra* note 104, art. 7(b). For the full text of Article 7, see *supra* note 111. See also Directive, *supra* note 131, art. 5. For the full text of Article 5, see *supra* note 169.

²³⁴ See UNESCO Convention, *supra* note 104, art. 7(b)(i). For the full text of Article 7, see *supra* note 111.

²³⁵ See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the full text of Article 7, see *supra* note 111. See also Directive, *supra* note 131, arts. 9, 10. For the full text of Article 9, see *supra* note 175. For the full text of Article 10, see *supra* note 177.

²³⁶ See *supra* text accompanying notes 196-197, and 200-202.

²³⁷ See Unidroit Convention, *supra* note 191, art. 2, Annex. For the full text of Article 2 and the Annex, see *supra* note 196.

²³⁸ See Unidroit Convention, *supra* note 191, arts. 3-7. For the full text of Articles 3 and 4, see *supra* note 198. For the full text of Articles 5-7, see *supra* note 199.

²³⁹ The corollary to this proposition is that the UNESCO Convention's and the Directive's failure to distinguish between these two legal categories makes it more difficult to determine whether they were intended to apply to all stolen artwork.

²⁴⁰ See *supra* text accompanying notes 200-202.

see the item returned. Thus, it is up to the private party to decide if the costs entailed in filing suit, compensating the BFP, and having the object returned, are worthwhile. The fact that the Unidroit Convention does not contain a documentation requirement for the return of "stolen cultural property" makes the process easier for both states and private parties that choose to file a claim.

The Unidroit Convention also differs from the UNESCO Convention and the Directive in the standard it requires a BFP to meet in order to be eligible for compensation.²⁴¹ In its problematic Article 7(b)(ii), the UNESCO Convention provides for automatic restitution for a BFP.²⁴² Although the Directive allows compensation only for BFPs who have exercised "due care and attention,"²⁴³ it neglects to define this standard of care. In contrast, the Unidroit Convention, by providing specific examples of how a BFP might satisfy its standard of care, much more clearly establishes the standard that a BFP must meet in order to prove that it exercised "due diligence" when it purchased the cultural object.²⁴⁴ The Unidroit Convention's incorporation of a specific compensation standard demonstrates its attempt to address the conflict in national legal systems that made Article 7(b)(ii) of the UNESCO Convention problematic for states that protect the BFP.²⁴⁵ Although the Unidroit Convention's compensation provision is an improvement over the compensation provision in the UNESCO Convention, it still does not fully protect a BFP from having to give up its cultural property. Thus, some states that protect the BFP may continue to find this lack of protection to be a problem.

Finally, the Directive and the Unidroit Convention have statute of limitation and arbitration provisions, which the UNESCO Convention lacks.²⁴⁶ The Unidroit Convention's statute of limitations is longer than that of the Directive,²⁴⁷ thus better ensuring that an original owner of stolen art will be able to file a timely claim. Moreover, the arbitration provisions,

²⁴¹ See Unidroit Convention, *supra* note 191, art. 4(1), 4(4). For the full text of Article 4, see *supra* note 198.

²⁴² See UNESCO Convention, *supra* note 104, art. 7(b)(ii). For the full text of Article 7, see *supra* note 111.

²⁴³ See Directive, *supra* note 131, art. 9. For the full text of Article 9, see *supra* note 175.

²⁴⁴ See Unidroit Convention, *supra* note 191, art. 4(4). For the full text of Article 4, see *supra* note 198.

²⁴⁵ For a fuller discussion of the problems associated with Article 7(b)(ii), see *supra* text accompanying note 123.

²⁴⁶ See Directive, *supra* note 131, art. 4(6). For the full text of Article 4(6), see *supra* note 179. See also Unidroit Convention, *supra* note 191, arts. 3(3)-(4), 8(2). For the full text of Article 3, see *supra* note 198. For the text of Article 8(2), see *supra* note 203.

²⁴⁷ Compare *supra* note 205 (Unidroit's requirement that a claim be filed within three years of locating the artwork and within fifty years of its disappearance) with *supra* note 171 (the Directive's requirement that a claim be filed within one year of discovering the loss and within thirty years of the artwork's unlawful removal).

available under both the Directive²⁴⁸ and the Unidroit Convention,²⁴⁹ provide a less adversarial and less costly alternative forum for resolving disputes.²⁵⁰ Resolution of a dispute through arbitration is more similar to the UNESCO Convention's approach of diplomatic requests. However, since not all disputes over property can be resolved in a cooperative manner, the UNESCO Convention's failure to provide for claims to be made through formal legal proceedings serves to significantly limit its effectiveness.

Of the three legal instruments, the Unidroit Convention appears to offer the best remedy for museums, galleries, auction houses, and collectors to recover their stolen artwork. This is because the Unidroit Convention appears to apply to all stolen artwork,²⁵¹ creates a private right of action,²⁵² has no documentation requirements for the recovery of stolen artwork, and requires a BFP to satisfy a more specific standard of care.²⁵³ However, the Unidroit Convention is also the furthest behind in the ratification process (although, admittedly, it is the most recent of the three legal instruments). Furthermore, the broad definition of "cultural property" under the Unidroit Convention makes it especially unlikely that states with large art markets, such as the UK will ever ratify it.²⁵⁴ Regardless of the comparative strengths and weaknesses of the UNESCO Convention, the Directive, and the Unidroit Convention, locating stolen artwork and pursuing art thieves is outside the reach of the current legal regime. Thus, efforts to recover stolen art in the EU must extend beyond the current legal regime and enlist the assistance of those who can effectively track the stolen artwork and pursue thieves.²⁵⁵

²⁴⁸ See *supra* text accompanying note 179.

²⁴⁹ See *supra* text accompanying note 203.

²⁵⁰ See Directive, *supra* note 131, art. 4(6). For the full text of Article 4(6), see *supra* note 179. See also Unidroit Convention, *supra* note 191, art. 8(2). For the full text of Article 8(2), see *supra* note 203.

²⁵¹ See *supra* text accompanying note 196.

²⁵² See *supra* text accompanying notes 200-202.

²⁵³ See *supra* text accompanying notes 207, 208.

²⁵⁴ See *supra* text accompanying notes 215-220.

²⁵⁵ Even the Directive and the Unidroit Convention acknowledge this problem. See Directive, *supra* note 131, pmbl.

The preamble, in relevant part, states:

Whereas administrative cooperation should be established between Member States as regards their national treasures, in close liaison with their cooperation in the field of stolen works of art and involving in particular the recording, with Interpol and other qualified bodies issuing similar lists, of lost stolen or illegally removed cultural objects forming part of their national treasures and their public collections.

See also Unidroit Convention, *supra* note 191, pmbl.

The preamble, in relevant part, states:

ACKNOWLEDGING that implementation of this Convention should be accompanied by other effective measures for protecting cultural objects, such as the development and use of registers, the physical protection of archaeological sites and technical co-operation.

VII. MECHANISMS OTHER THAN THE UNESCO CONVENTION, THE EU
DIRECTIVE, AND THE UNIDROIT CONVENTION

There are several public and private mechanisms outside the current legal regime that have been effective in the tracking and recovery of stolen artwork. The Art Loss Register ("ALR") has achieved much success in tracking artwork worldwide, but lacks the authority of law or government. Scotland Yard's Art and Antiques Squad has achieved notoriety for its specialized law enforcement approach, but is limited by its size and reach. In addition, Interpol has made substantial inroads in the area of transnational intelligence sharing, but lacks law enforcement power.

A. Art Loss Register

In January 1991, ALR, a for-profit corporation, launched its operations in London and New York at the International Foundation for Art Research ("IFAR").²⁵⁶ With support from Sotheby's, Christie's, and insurance brokers, such as Lloyd's of London and Nordstern Art Insurance, the ALR is currently the world's largest independent database of stolen artworks and antiques.²⁵⁷ The database contains computerized images based on information provided by law enforcement agencies, insurance companies, museums, galleries, and private individuals.²⁵⁸

ALR catalogues a database of up to 100,000 stolen works of art, and it has helped recover \$40 million worth of stolen artwork.²⁵⁹ Insurance firms and law enforcement agencies are ALR's main customers.²⁶⁰ More than 400 insurance companies subscribe to ALR²⁶¹ and pay dues according to their volume of underwriting.²⁶² Customers can send in details of any stolen work or valuable,²⁶³ and individuals not with a member insurer pay a fee

²⁵⁶ See *Assistance from Recovery Service*, LAWYER, Nov. 21, 1995, at 16, available in LEXIS, News Library, Lawyer File.

²⁵⁷ *Id.* More than 50% of stolen items reported to the ALR between 1991 and 1996 were stolen from private homes. See ALR NEWS, Feb. 1997, at 4. Items stolen from churches, galleries, and museums constituted 10%, 12%, and 11%, respectively, of all items reported. *Id.*

²⁵⁸ *Id.* The information in the database is divided into the following two main groups: stolen works and works that were allegedly stolen or destroyed under suspicious circumstances. See Kielmas, *supra* note 5.

²⁵⁹ See Gary Tuchmann, *CNN Today*, Sept. 9, 1997, available in LEXIS, News Library, Cnn File. Between 1991 and 1995 the ALR recovered more than 700 items at a total value of \$25 million. See ALR NEWS, Mar. 1996.

²⁶⁰ See Steven Marjanovic, *Some Banks May Find Creative Ways to Use Stolen-Art Data Base*, AM. BANKER, June 28, 1996, available in 1996 WL 5565522.

²⁶¹ See Banham, *supra* note 37, at 10A.

²⁶² *Id.*

²⁶³ See Jessica Gorst-Williams, *Money-Go-Round: Technical Wizardry Spells Trouble for Clueless Thieves*, DAILY TELEGRAPH, Jan. 20, 1996, at 19, available in 1996 WL 3921680 (quoting James Emson, Managing Director of the Art Loss Register).

to register an item.²⁶⁴ Today, Sotheby's, Christie's, and other major auction houses also pay ALR to check pieces they offer for sale.²⁶⁵ They send in their catalogues by e-mail a week or two before a sale, so that ALR can check the items to see if they are listed in the registry.²⁶⁶

While ALR is not involved in police investigations, it complements police activities and provides expert assistance.²⁶⁷ The recovery rate for search processes initiated by police phone calls to the ALR is one in fifteen.²⁶⁸ When an owner, loss adjuster, or insurer reports a theft, it is logged on the database with as much detail as possible, including a photograph if available.²⁶⁹ The item must be described in a way that makes it uniquely identifiable and where possible, it should also have a police crime reference number.²⁷⁰ It takes an average of eighteen months for an item to be recovered with ALR's assistance.²⁷¹ Today, seventy-five percent of the insurance companies that have been subscribers to the ALR since its inception have recovered more financially than they have spent.²⁷²

However, not everyone is satisfied with ALR's work. Some insurers resent that ALR collects a reward fee when a stolen work is recovered.²⁷³ Others have criticized ALR for being overly eager to publicize thefts, thereby jeopardizing police investigations.²⁷⁴

²⁶⁴ *Id.*

²⁶⁵ See Karen Fernau, *Stealing the Show: Thieves Hit Art Galleries: Openness Makes Scottsdale Stores Especially Vulnerable*, ARIZ. REPUBLIC, Mar. 24, 1996, available in LEXIS, News Library, Azrep File. See also John Henry Kurtz, *Art Theft: Stolen Art Objects and Antiquities Being Recovered with the Aid of a New Database*, SCAN, Aug. 30, 1997, available in LEXIS, News Library, Cnbcnw File.

²⁶⁶ See UK: *Art and Crafty—Fine Art Insurance*, POST MAG., June 23, 1994, available in LEXIS, World Library, Textline File. Auction houses are more scrupulous about checking the provenance of items put up for sale than are dealers. See Barbara Lantin, *The Art of Helping Police with Inquiries*, INDEPENDENT, Apr. 3, 1996, at 24, available in 1996 WL 9918070. The less scrupulous attitude of dealers is significant in light of estimates that five percent of the works dealers handle were stolen at some stage in the past. See UK: *Art and Crafty—Fine Art Insurance*, *supra*.

²⁶⁷ See *Assistance from Recovery Service*, *supra* note 256.

²⁶⁸ See Lantin, *supra* note 266. As time goes on, the return rate may improve. More recently, with the help of auction houses and police, ALR has averaged a return rate of one stolen item per day. See Scott Balduaf, *Museum Asks: Does It Take a Thief to Catch a Degas?*, CHRISTIAN SCI. MONITOR, Aug. 29, 1997, at 3, available in LEXIS, News Library, Csm File. James Emson, managing director of the ALR, claims that between mid-1995 and mid-1997, the ALR identified stolen artworks for the police every two out of three days. See Kurtz, *supra* note 265.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See UK: *Art and Crafty—Fine Art Insurance*, *supra* note 266.

²⁷² See Lantin, *supra* note 266. However, this claim may be somewhat misleading. While the ALR receives between 1,000 and 1,500 notifications per month, by 1996 it had recovered only 850 items during the course of its existence. See Norman, *supra* note 21.

²⁷³ See Checkland, *supra* note 13, at 95.

²⁷⁴ *Id.*

B. Scotland Yard's Art and Antiques Squad

Scotland Yard's Art and Antiques Squad is a specialized squad that works with police from across Europe, the Far East, and the United States (both with the FBI and local police departments).²⁷⁵ The squad was disbanded in 1984 due to financial constraints, but when auction houses and dealers complained that the police needed more assistance in combating art theft, the government resurrected the squad in 1989.²⁷⁶ Scotland Yard also has a computer database called *Artful*, which has information on over 1,000 stolen paintings and tens of thousands of stolen art objects.²⁷⁷

In Britain alone, the squad has recovered stolen art valued at a total of \$18 million between 1991 and 1995.²⁷⁸ Scotland Yard has played a significant role in a number of high profile cases. One of its biggest cases involved the recovery of eleven stolen works of art, including pieces by Rubens and Vermeer, which were valued at \$48 million and stolen in 1986 from a private collection in Ireland.²⁷⁹ When Edvard Munch's *The Scream* was stolen on February 12, 1994 in Oslo, Norway, the squad was "instrumental" in its recovery,²⁸⁰ after John Butler, the head of Scotland Yard, masterminded a plan to recover the painting and trap the criminals.²⁸¹ More recently, Scotland Yard was responsible for an art theft investigation leading to the arrest in early 1997 of nine men who allegedly stole valuable art-

²⁷⁵ See Ray Moseley, *In Art Heists, Call Scotland Yard: Special Unit Concentrates on International Thieves*, CHIC. TRIB., Feb. 25, 1996, at C10, available in 1996 WL 2646920. Since art theft has become increasingly linked with money laundering, in 1996 Scotland Yard folded its arts and antiques squad into its organized crime group. See Glaister, *supra* note 30.

²⁷⁶ See Moseley, *supra* note 275. In fact, according to Niall Mulvihill, commander of Specialist Operations Crime at New Scotland Yard, the size of the unit has recently increased and now has five detectives and two civilian staff members. See *Not So*, SUN. TIMES, Jan. 19, 1997, available in LEXIS, News Library, Ttimes File.

²⁷⁷ See Moseley, *supra* note 275, at 10.

²⁷⁸ *Id.*

²⁷⁹ *Id.* Police have only recovered eight of these works. *Id.* For additional discussion about this theft see Short, *supra* note 64 and Durden-Smith, *supra* note 3.

²⁸⁰ See Ladbury, *supra* note 5, at 47; see also Rolf Soderlind, *Screams of Protest as Norway's 'Scream' Trial Ends*, REUTERS NO. AMER. WIRE, Jan. 17, 1996, available in LEXIS, News Library, Reuna File ("The Scream was stolen on the opening day of the Lillehammer Winter Olympics by two unidentified men, filmed by video surveillance, who climbed into the gallery up a ladder. They smashed a window, grabbed the painting and disappeared in less than a minute, leaving a note saying: 'Thank you for little security.'").

²⁸¹ Butler sent out messages through contacts in the criminal underworld that there were people wishing to repurchase the painting. An undercover officer posed as a representative of the J. Paul Getty Museum in California. The representative claimed that the museum had negotiated a secret deal with the National Gallery in Oslo, whereby the museum would pay the ransom to recover the painting as long as it received permission to borrow the painting following its recovery. The criminals fell for the scheme and were thereafter arrested and prosecuted. See Weale, *supra* note 42, at T2. Although the painting was valued at over \$72 million, the thieves had tried to obtain \$490,000 for it. See Kielmas, *supra* note 5.

work from many London homes and galleries over a period of several years.²⁸² Although Scotland Yard's police art squad is neither the only art squad among EU countries nor the largest of its kind,²⁸³ it appears to be the best known, achieving international recognition.²⁸⁴

C. Interpol

The International Criminal Police Organization, or Interpol, is based in Lyons, France, and has 177 member countries.²⁸⁵ Founded in 1923, it is the oldest agency for assisting police cooperation.²⁸⁶ Interpol provides a com-

²⁸² See Glaister, *supra* note 30.

²⁸³ Italy has a special police unit dedicated to recovering stolen art. With 120 officers and a computer database of 200,000 stolen objects, it is considered to be one of the "largest and most sophisticated squads in the world." See Stille, *supra* note 12. In 1996, Italy's special police unit recovered 36,531 pieces of stolen art. See Dalbert Hallenstein, *The Angry Old Man of Europe*, EUROPEAN, Mar. 16, 1998, at 36, available in LEXIS, News Library, Eupean File. Furthermore, out of forty-three police districts in England and Wales, two have specialist squads. See Norman, *supra* note 21.

²⁸⁴ Perhaps Scotland Yard's world-wide recognition comes from the large amount of publicity it received from many of the high-profile cases it investigated. A search executed on LEXIS reveals that the number of news stories mentioning Scotland Yard's involvement in recovering stolen art was 30 in 1996 and 38 in 1997.

²⁸⁵ See Norman, *supra* note 21.

²⁸⁶ See POLICING ACROSS NATIONAL BOUNDARIES 56 (Malcolm Anderson & Monica Den Boer eds., 1994). Interpol provides a communications system through the work of its General Secretariat and its National Central Bureaus [hereinafter NCBs].

The function of Interpol's General Secretariat is set out in Articles 25-27 of Interpol's Constitution.

Article 25 states: "The permanent departments of the Organization shall constitute the general Secretariat." See INTERNATIONAL CRIMINAL LAW: A COLLECTION OF INTERNATIONAL AND EUROPEAN INSTRUMENTS 249, 252 (Christine Van Den Wyngaert & Guy Stessens eds., 1996) (reproducing Interpol's Constitution) [hereinafter Interpol Constitution].

Article 26 states:

The General Secretariat shall:

- (a) Put into application the decisions of the General Assembly and the Executive Committee;
- (b) Serve as an international centre in the fight against ordinary crime;
- (c) Serve as a technical and information centre;
- (d) Ensure the efficient administration of the Organization;
- (e) Maintain contact with national and international authorities, whereas questions relative to the search for criminals shall be dealt with through the National Central Bureaus;
- (f) Produce any publications which may be considered useful;
- (g) Organize and perform secretariat work at the sessions of the General Assembly, the Executive Committee and any other body of the Organization.;
- (h) Draw up a draft programme of work for the coming year for the consideration and approval of the General Assembly and the Executive Committee;
- (i) Maintain as far as is possible direct and constant contact with the President of the Organization.

Id. at 252-53.

munications system for information exchange between its General Secretariat and the police units of member countries.²⁸⁷ Interpol transmits information and processes requests for action, which are called international notices,²⁸⁸ and is also in the process of creating an international database of stolen artworks.²⁸⁹

Most of Interpol's work is based in Europe, with approximately eighty percent of its messages originating in the National Central Bureaus ("NCBs") of the Council of Europe countries.²⁹⁰ Of these, an estimated forty percent of Interpol's messages come from within EU Member States.²⁹¹

In the past, criticism of Interpol has focused on its inefficiency and its unacceptably slow response to complaints.²⁹² The agency has also been criticized for disseminating information about art thefts inexpediently and for failing to update its records periodically by removing works that have been recovered from its records.²⁹³

Although Interpol has recently worked to correct inefficiencies and slow response time,²⁹⁴ criticism continues.²⁹⁵ Some members have questioned Interpol's security, and have also raised suspicions about the policing

Article 27 states: "The General Secretariat shall consist of the Secretary General and a technical and administrative staff entrusted with the work of the Organization." *Id.*

The function of the NCBs is set out in Interpol's Constitution. Article 31 states:

In order to further its aims, the Organization need [sic] the constant and active co-operation of its Members, who should do all within their power which is compatible with the legislation of their countries to participate diligently in its activities.

Id. at 254.

Article 32 states:

In order to ensure the above co-operation, each country shall appoint a body which will serve as the National Central Bureau. It shall ensure liaison with:

- (a) The various departments in the country;
- (b) Those bodies in other countries serving as National Central Bureaus;
- (c) The Organization's General Secretariat.

Id.

²⁸⁷ See POLICING ACROSS NATIONAL BOUNDARIES, *supra* note 286, at 56.

²⁸⁸ *Id.*

²⁸⁹ See Paul Majendie, *Interpol Fights Art Thieves with Computers*, CHIC. TRIB., Nov. 16, 1995, at 7E, available in 1995 WL 6266006.

²⁹⁰ See POLICING ACROSS NATIONAL BOUNDARIES, *supra* note 286, at 56.

²⁹¹ *Id.* Since publication of this book, the number of EU Member States has increased from twelve to fifteen. For a list of current members, see *supra* note 48.

²⁹² See POLICING ACROSS NATIONAL BOUNDARIES, *supra* note 286, at 56.

²⁹³ See CONKLIN, *supra* note 44, at 5.

²⁹⁴ By mid-1997, Interpol had completed 90% of a major overhaul of its computer communications network, which cost it \$5.2 million. See Rogert Mellet, *Communications Closes in on International Crime*, 31 TELECOMMUNICATIONS (Int'l. Ed.) 44, 44-46 (1997), available in LEXIS, Busfin Library, ABI File.

²⁹⁵ See POLICING ACROSS NATIONAL BOUNDARIES, *supra* note 286, at 56.

policies and ambitions of other members.²⁹⁶ Interpol also has had little past success in developing a centralized registry of stolen art.²⁹⁷ Reports of art thefts are accepted only if the agency reasonably believes that the stolen objects have crossed national borders.²⁹⁸ Furthermore, Interpol must depend on its members to report thefts²⁹⁹ and finance its budget.³⁰⁰

To be sure, Interpol's role in facilitating greater police cooperation in Europe is limited.³⁰¹ It primarily exists as a communications network, rather than as an operational organization,³⁰² and increasingly functions as a forum for discussing and analyzing European crime trends.³⁰³

VIII. ROLE FOR EUROPOL IN RECOVERING STOLEN ARTWORK

The concept of a European police force, Europol, is provided for in Articles K.1 and K.3 of the TEU.³⁰⁴ The TEU commits Member States to regard what were traditionally national interests as areas of common interest, including policies on asylum, border checks, immigration, drug addic-

²⁹⁶ *Id.*

²⁹⁷ See CONKLIN, *supra* note 44, at 5. One explanation for Interpol's inefficiency might be attributed to the attitude of the organization, which treats art theft as a "tiresome irrelevance" and "goes through the motions of tackling" art theft "without any expectations of success." See Norman, *supra* note 21.

²⁹⁸ See CONKLIN, *supra* note 44, at 5.

²⁹⁹ See Patel, *supra* note 8.

³⁰⁰ See Interpol Constitution, *supra* note 286, art. 38.

Article 38 states:

The Organization's resources shall be provided by:

- (a) The financial contributions from Members;
- (b) Gifts, bequests, subsidies, grants and other resources after these have been accepted or approved by the Executive Committee.

³⁰¹ See POLICING ACROSS NATIONAL BOUNDARIES, *supra* note 286, at 56.

³⁰² *Id.*; see also Mellet, *supra* note 294, at 44-46.

³⁰³ *Id.*

³⁰⁴ Article K.1 of the TEU provides:

For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

...

9. police cooperation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).

TEU, *supra* note 143, art. K.1.

Article K.3 provides:

1. In the areas referred to in Article K.1, Member States shall inform and consult one another within the Council with a view to co-ordinating their action. To that end, they shall establish collaboration between the relevant departments of their administration . .

..

For a general discussion about the TEU, see *supra* text accompanying notes 141-143.

tion, international fraud, judicial cooperation, customs cooperation, and police cooperation.³⁰⁵

Europol began operating in January 1994 with authority in only five crime areas — drug trafficking, auto theft, illegal immigration, the illegal transfer of nuclear material, and money laundering that is connected to those four crimes.³⁰⁶ When it began operating, about fifty senior police officers and their staff were working in the office,³⁰⁷ which is based in the Hague.³⁰⁸ During 1995 and the first half of 1996, Europol handled more than 2,500 cases.³⁰⁹ Today, Europol has a staff of approximately 110 people and a budget of \$8.3 million, supplemented by another \$6.4 million for computer development.³¹⁰

Until the Europol Convention enters into force, Europol has to rely on liaison officials of each member country, who decide what criminal data to provide on a case-by-case basis.³¹¹ Europol's ultimate objective is to improve cooperation among Member States' police authorities in their efforts to prevent and combat serious forms of international crime.³¹²

In the first stage after its official establishment, the agency is to serve as an intelligence force to aid national police forces by collecting and analyzing information.³¹³ Specifically, during the first stage, Europol will focus solely on "unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime."³¹⁴ Within two years of its entry into force, Europol's competence will extend to "illegal money laundering activities," and other criminal offenses relating to the crimes committed within Europol's com-

³⁰⁵ TEU, *supra* note 143, art. K.1.

³⁰⁶ See Jeffrey Ulbrich, *European Police Working Together Against International Crime*, ASSOCIATED PRESS, Aug. 26, 1996, available in 1996 WL 4437393.

³⁰⁷ See Marlise Simons, *New European Police to Fight Regional Crime*, N.Y. TIMES, Feb. 7, 1994, at 11A, available in LEXIS, News Library, Nyt File.

³⁰⁸ See *EU Leaders Agree on Europol Convention*, REUTERS N. AM. WIRE, June 21, 1996, available in LEXIS, News Library, Reuna File.

³⁰⁹ See Michael Schmidt-Klingenberg, *Europol Sleuths Take High-Tech Approach to Organized Crime*, NEWS & OBSERVER, Sept. 8, 1996, available in 1996 WL 2896083.

³¹⁰ See Ulbrich, *supra* note 306.

³¹¹ See Schmidt-Klingenberg, *supra* note 309.

³¹² See Convention on the Establishment of a European Police Force (Europol Convention), art. 2, Nov. 27, 1995, O.J. (C 316) 1 (1995) [hereinafter Europol Convention].

³¹³ See Simons, *supra* note 307.

³¹⁴ See Europol Convention, *supra* note 312, art. 2(2). For a definition of "trade in human beings," see the Europol Convention's Annex referred to in Article 2. According to the Annex:

'traffic in human beings' means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.

Id.

petence.³¹⁵ Later, the vision is that Europol will direct its own investigations and become a "powerful regional law enforcement agency."³¹⁶

The Council of the EU may also authorize Europol to deal with any of the crimes specified in the Annex to the Convention,³¹⁷ such as "crimes against property or public goods including fraud."³¹⁸ One of the nine categories listed under this section of the Annex is "illicit trafficking in cultural goods, including antiquities and works of art."³¹⁹ Thus, so long as the Council chooses to expand Europol's jurisdiction to this area of crime, Europol will have the authority to combat the illicit art trade in the EU.

Europol will also have the ability to recover stolen artwork both because of its information-sharing tools and its ability to draw on national resources that will enable it to specialize in particular areas of crime.

As one of its primary tasks, Europol must maintain "a computerized system of collected information."³²⁰ The system will have three components: 1) "an information system . . . with restricted and precisely defined content which allows rapid reference to the information available to the Member States and Europol,"³²¹ 2) "work files . . . established for variable periods of time for the purposes of analysis and containing comprehensive information,"³²² and 3) "an index system. . . ."³²³

Europol will coordinate information collection and transmission through "national units" and liaison officers.³²⁴ National units are to sup-

³¹⁵ See Europol Convention, *supra* note 312, art. 2(3).

³¹⁶ See Simons, *supra* note 307.

³¹⁷ See Europol Convention, *supra* note 312, art. 2(2).

³¹⁸ See Europol Convention, *supra* note 312, Annex.

³¹⁹ *Id.*

³²⁰ See Europol Convention, *supra* note 312, art. 3(5).

³²¹ See Europol Convention, *supra* note 312, art. 6(1)(a).

³²² See Europol Convention, *supra* note 312, art. 6(1)(b).

³²³ See Europol Convention, *supra* note 312, art. 6(1)(c).

³²⁴ See Europol Convention, *supra* note 312, arts. 4(1)-(3). Article 4(1) states: "Each Member State shall establish or designate a national unit to carry out the tasks listed in this Article."

Article 4(2) states:

The national unit shall be the only liaison body between Europol and the competent national authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and, in particular the relevant national constitutional requirements.

Article 4(3) states: "Member States shall take the necessary measures to ensure that the national units are able to fulfill their tasks and, in particular, have access to relevant national data."

See also Europol Convention, *supra* note 312, arts. 5(1)-(2).

Article 5(1) states:

1. Each national unit shall second at least one liaison officer to Europol. The number of liaison officers who may be sent by Member States to Europol shall be laid down by unanimous decision of the Management Board; the decision may be altered at any time by unanimous decision of the Management Board. Except as otherwise stipulated in

ply up-to-date information and intelligence to Europol's headquarters either upon request or on their own initiative.³²⁵ Member States are responsible for enabling national units to obtain current data from competent authorities.³²⁶ Every national unit will be represented at Europol's central location by at least one liaison officer,³²⁷ who will "assist in the exchange of information between the national units" that it represents and Europol.³²⁸ Europol will "obtain, collate, and analyze information and intelligence,"³²⁹ and "facilitate the exchange of information between the Member States."³³⁰ Europol will also "forward all relevant information to the national units,"³³¹ where it will ultimately be forwarded to the States' competent authorities.³³²

Europol's computerized information-sharing system would serve to register stolen artwork and transmit investigative data.³³³ Any individual, business, or organization that contacts the police to report a theft of artwork would trigger Europol's information-sharing network. The national unit, which is responsible for keeping up-to-date information, would then enter the information into the computerized system, thereby notifying Europol and other national units immediately. By enlisting the aid of all European police units, Europol would be able to overcome a weakness found among some police forces that do have computerized lists of stolen art — an insufficient number of staff members, which can lead to out-of-date information.³³⁴ In addition, the data protection legislation of various countries have prevented those individualized police systems from linking up with each

specific provisions of this Convention, liaison officers shall be subject to the national law of the seconding Member State.

Article 5(2) states:

2. The liaison officers shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and in compliance with the provisions applicable to the administration of Europol.

³²⁵ See Europol Convention, *supra* note 312, art. 4.

³²⁶ See Europol Convention, *supra* note 312, art. 4(3).

³²⁷ See Europol Convention, *supra* note 312, art. 5(1).

³²⁸ See Europol Convention, *supra* note 312, art. 5(3).

³²⁹ See Europol Convention, *supra* note 312, art. 3(1) (b).

³³⁰ See Europol Convention, *supra* note 312, art. 3(1) (a).

³³¹ See Europol Convention, *supra* note 312, art. 3(1) (d).

³³² See Europol Convention, *supra* note 312, art. 3(1) (c); see also Europol Convention, *supra* note 312, art. 2(4). Article 2(4) states: "[f]or the purposes of this Convention, 'competent authorities' means all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences." *Id.*

³³³ In the past, it could take weeks for Member States to transmit information to each other due to legal barriers, bureaucracy, authorization delays and language difficulties. See Report on Europol, European Parliament Committee on Civil Liberties and Internal Affairs, EUR. PARL. DOC. (A4-335) 11 (1995) [hereinafter Report on Europol]. The central sharing of data would also promote efficiency by ending parallel investigations among different law enforcement agencies who are not in contact. *Id.*

³³⁴ See Checkland, *supra* note 13, at 94.

other.³³⁵ Until now, the only international police database is that of Interpol, but this contains notification only of truly major art thefts, and those only on the occasions when the relevant police forces choose to inform Interpol,³³⁶ which is not an automatic process.

In the more traditional realm of law enforcement, Scotland Yard's Art and Antiquities Squad is a good model for a law enforcement unit that uses specialized investigative procedures to combat art theft because it has been instrumental in recovering stolen art in the past. Europol would also help coordinate investigations. First, Europol would "develop specialized knowledge of the investigative procedures of the competent authorities in the Member States and provide advice on investigations."³³⁷ Europol would also provide "strategic intelligence to assist with and promote the efficient and effective use of the resources available at [the] national level for operational activities."³³⁸ Finally, Europol may also provide training, equipment, and technical and forensic assistance to Member States' competent authorities to facilitate investigations.³³⁹

Since Europol is authorized to deal with different areas of transnational crime, it is well-positioned to draw on information regarding these other types of crime if there is a possible connection to a particular incidence of art theft. If Europol or national units have additional information regarding related criminal offenses, "the data stored in the information system shall be marked accordingly to enable national units and Europol to exchange information on the related criminal offences."³⁴⁰ Since art theft is often linked to drug trafficking and money laundering — two major areas of criminal activity with which Europol was initially authorized to deal — Europol is likely to have well-developed resources in place to draw on when it encounters a possible link between an incidence of art theft and drug trafficking or money laundering.³⁴¹ Furthermore, where art theft is linked to organized crime,³⁴² it is likely that the crime group has engaged in other il-

³³⁵ *Id.* The Europol Convention also contains a number of provisions that aim to standardize data protection laws in Member States and ensure protection for data transmitted through Europol. See Europol Convention, *supra* note 312, arts. 10, 14, 15, 17-20, 25.

³³⁶ See Checkland, *supra* note 13, at 94.

³³⁷ See Europol Convention, *supra* note 312, art. 3(2) (a).

³³⁸ See Europol Convention, *supra* note 312, art. 3(2) (b). A report by the European Parliament's Committee on Civil Liberties and Internal Affairs describes what operational activities would entail: "[c]entrally directed simultaneous operations throughout the European Union, such as searches, raids and arrests, as well as the organization of what are known as controlled deliveries of illegal goods, whereby the police carry out undercover monitoring of transport operations across Europe. . . ." See Report on Europol, *supra* note 333, at 15.

³³⁹ See Europol Convention, *supra* note 312, art. 3(3).

³⁴⁰ See Europol Convention, *supra* note 312, art. 8(4).

³⁴¹ For a discussion of art theft's link to drug trafficking and money laundering, see *supra* text accompanying notes 66-75.

³⁴² For a discussion of art theft's link to organized crime, see *supra* text accompanying notes 76-80.

legal activities of an international nature with which Europol is authorized to police.

Because the ALR works closely with law enforcement authorities, there is no reason that it cannot develop a similar relationship with Europol, even if it does so largely through Europol's national units. As is the case with other law enforcement authorities, Europol should check ALR's registry whenever it recovers stolen artwork and cannot identify its original owner through Europol's database. Not all victims of art theft report their losses to both the police and ALR, if they report them at all. Some owners may not want to alert authorities to their failure to pay taxes on a stolen item.³⁴³ Others may not know about ALR, or, if they do, may not want to pay for the use of ALR's services if they can report the theft to the police.³⁴⁴

Although ratification of the Europol Convention by all EU members is not yet complete, the final obstacle to ratification was removed in 1996 when Great Britain agreed to a compromise over the ECJ's role in adjudicating Europol disputes.³⁴⁵ The compromise allows consenting countries to request referrals from their own courts to remove a case to the ECJ.³⁴⁶ This compromise allowed Great Britain to choose not to defer to the ECJ in many cases.³⁴⁷ Following the compromise, EU leaders approved the Europol Convention.³⁴⁸ However, in order to go into effect, the Convention must be ratified by all fifteen Member States,³⁴⁹ a process that should take

³⁴³ See *supra* text accompanying note 54.

³⁴⁴ The Europol Convention provides for Europol to communicate personal data that it holds to third parties provided it abides by certain safeguards, but those parties must be "governed by public law." See Europol Convention, *supra* note 312, arts. 10(4), 18(1). Although ALR is a private body and is therefore not covered by this provision, Europol should still be able to furnish ALR with information regarding specific pieces of stolen artwork, provided it does not transfer personal data on individuals, which is a major concern addressed in the Europol Convention. See Europol Convention, *supra* note 312, art. 10.

³⁴⁵ See *EU Summit Clears Way for Europol to Start to Work*, Reuter Eur. Comm. Rep., June 21, 1996, available in LEXIS, News Library, Reuec; see also *EU Leaders Agree on Europol Convention*, REUTERS, June 21, 1996, available in LEXIS, News Library, Reuna File.

³⁴⁶ See *EU Summit Clears Way for Europol to Start to Work*, *supra* note 345.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 327.

³⁴⁹ See Europol Convention, *supra* note 312, art. 45. Article 45 states:

Entry into force

1. This convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.
3. This convention shall enter into force on the first day of the month following the expiry of a three-month period after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the council of the act drawing up this Convention, is the last to fulfill that formality.

only one to two years.³⁵⁰ By the end of March 1998, the only three EU Member States that had not yet ratified the Europol Convention were Belgium, Greece, and Luxembourg, and there is no indication that any of them will not do so in the near future.³⁵¹

IX. CONCLUSION

The illicit art trade will continue to flourish as long as the incentives for theft continue to exist. However, the vision of Europol as an effective force in the recovery of stolen art in the EU is promising.

Cooperation among EU states is imperative in order to track and recover stolen artwork. Thus, the UNESCO and Unidroit Conventions appear to be largely ineffective because they have not and are unlikely to unite all of the EU states in a cooperative effort. The possibility that all EU members will ever ratify both Conventions is small because of the conflicting desires of southern Member States, which seek to prevent the removal of cultural property from their territories, and northern Member States, which seek to facilitate free trade in art, given their large art markets. Furthermore, neither Convention effectively resolves the conflict in national laws governing BFPs, although the Unidroit Convention takes positive steps in that direction. Even if all EU members eventually comply with the Directive, its major weakness is that it, like the UNESCO Convention, does not provide for a private right of action. Like the UNESCO Convention, the Directive subjects private party interests to the whims of states that might not choose to pursue a claim on a private party's behalf. Moreover, both the UNESCO Convention and the Directive do not cover all stolen artwork. Thus, standing alone, the current legal regime cannot effectively address the problem of art theft in the EU.

Although not yet in force, the Europol Convention will likely be ratified by all EU Member States. No Member State has expressed opposition

4. Without prejudice to paragraph 2, Europol shall not take up its activities under this Convention until the last of the acts provided for in Articles 5(7), 10(1), 24(7), 30(3), 31(1), 35(9), 37, and 41(1) and (2) enters into force.

5. When Europol takes up its activities, the activities of the Europol Drugs Unit under joint action concerning the Europol Drugs Unit of 10 March 1995 shall come to an end. At the same time, all equipment financed from the Europol Drugs Unit joint budget, developed or produced by the Europol Drugs Unit of [sic] placed at its disposal free of charge by the headquarters State for its permanent use, together with the Unit's entire archives and independently administered data files shall become the property of Europol.

6. Once the council has adopted the act drawing up this Convention, Member States, acting either individually or in common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities.

³⁵⁰ See Ulbrich, *supra* note 306; see also Report on Europol, *supra* note 333, at 12.

³⁵¹ According to one source, Member States do not disagree over the need for a European police force in the same way that they are divided over the use of a single currency. See Report on Europol, *supra* note 333, at 11.

to ratification, and only three Member States have not yet ratified the Europol Convention. Europol can do little to resolve the conflicting national laws governing BFPs or the differing attitudes of southern and northern Member States, but it can establish the infrastructure to track stolen artwork and art thieves, which the current legal regime is unequipped to do, and which the ALR, Scotland Yard, and Interpol are unable to do alone. Europol's strength is its move away from drawn out legal and diplomatic battles and instead toward a cooperative law enforcement approach. ALR's success is its large database of stolen artwork; Scotland Yard is known for its investigative expertise in the area of art theft; and Interpol's appeal is its international approach to fighting crime. Europol draws on the successful features of ALR, Scotland Yard, and Interpol to carve its own niche in the battle against art theft.

In general, Europol is based on cooperation among EU states in their common desire to fight regional and international crime through more efficient and effective law enforcement. There are two ways in which Europol works toward this goal and which would be effective in the fight against art theft in the EU. First, Europol would be effective in tracking art and pursuing thieves through its communications network that would centralize data originating with law enforcement agencies in different Member States. This would provide law enforcement authorities in different Member States quick access to notification of art thefts in other Member States and to investigative data surrounding those thefts. Europol's centralized database would be particularly helpful in cases where art theft is linked to other crimes of an international nature that Europol is authorized to deal with, such as drug trafficking and money laundering.

The other ways in which Europol would be an effective tool in the battle against art theft is the role that it would play in both coordinating investigations on a regional scale and providing law enforcement authorities with technical assistance if they lack the necessary experience, resources, or expertise. Thus, Europol's sophisticated communications network and its investigative involvement are its major tools for tracking stolen art and thieves efficiently and expediently, and would allow Europol to fill a unique role that current legal and nonlegal mechanisms have left vacant.

Still, it remains to be seen how soon the remaining EU states will ratify the Europol Convention and how soon after ratification the Council will commit Europol to a specific focus on combating the illicit art trade. In addition, the question remains: will the vision of an operative police force be realized, or will Europol, like Interpol, serve as little more than a communications network? The ALR and Interpol have shown that quick and unimpeded information sharing is crucial in the policing of stolen artwork. At the same time, Scotland Yard has demonstrated that specially trained investigative units are the key to pursuing thieves. Europol embodies both of these approaches, with the anticipated resources and expertise necessary for success in combating art theft.